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Filing date: **09/21/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Proceeding | 92053787 |
| Party | Plaintiff Everett W James aka Tad James |
| Correspondence Address | MARTIN E HSIA CADES SCHUTTE LLP 1000 BISHOP STREET, SUITE 1200 HONOLULU, HI 96813 UNITED STATES cmiwa@cales.com, mhsia@cales.com |
| Submission | Motion to Amend Pleading/Amended Pleading |
| Filer's Name | Martin E. Hsia, Reg. No. 32,471 |
| Filer's e-mail | mhsia@cales.com, cmiwa@cales.com, bhairston@cales.com |
| Signature | /Martin E. Hsia/ |
| Date | 09/21/2011 |
| Attachments | Motion to Amend Petition and Join Party Defendant.pdf (2 pages)(52101 bytes) Memorandum in Support.pdf (7 pages)(303389 bytes) Declaration of Counsel.pdf (3 pages)(82940 bytes) Exhibit A.pdf (67 pages)(3984943 bytes) Exhibit B.pdf (15 pages)(655516 bytes) Exhibit C.pdf (37 pages)(1410725 bytes) Certificate of Service.pdf (2 pages)(40009 bytes) |

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD


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| EVERETT W. JAMES aka TAD JAMES, |) | |
| |) | |
| Petitioner, |) | |
| |) | Cancellation No. 92/053787 |
| v. |) | |
| |) | Registration No. 3,467,675 |
| METAGENICS, INC., a Delaware corporation, |) | |
| |) | |
| Respondent. |) | |
| |) | |

**PETITIONER’S MOTION TO AMEND PETITION FOR
CANCELLATION AND TO JOIN PARTY DEFENDANT**

Petitioner EVERETT W. JAMES aka Tad James (“**Petitioner**”), by and through his undersigned attorney, hereby respectfully moves for an order granting leave to amend Petitioner’s Petition For Cancellation filed on or about March 10, 2011 (the “**Petition**”), pursuant to Fed. R. Civ. P. 15(a) and 37 CFR § 2.115, and also, joining Metagenics, Inc., a California corporation, as a party defendant in this proceeding. Petitioner seeks leave to amend the Petition to add a newly-discovered claim – viz. that the subject use-based registration is *void ab initio* because the application from which it issued was filed by an entity that was not then the owner of the mark, pursuant to 15 U.S.C. § 1051(a). Petitioner’s Motion further seeks to join the original applicant as a party defendant, to facilitate discovery. The original applicant is being served with a copy of this Motion and the proposed Amended Petition attached hereto.

For the reasons set forth in the attached memorandum and exhibits, Petitioner respectfully submits that this Motion should be granted.

DATED: Honolulu, Hawaii this 21st day of September, 2011.



Martin E. Hsia, Reg. No. 32,471
CADES SCHUTTE
A Limited Liability Law Partnership
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
Tel: (808) 521-9200
Attorney for Petitioner
EVERETT W. JAMES
aka TAD JAMES

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| |) | Registration No. 3,467,675 |
| METAGENICS, INC., a Delaware corporation, |) | |
| |) | |
| Respondent. |) | |
| |) | |

MEMORANDUM IN SUPPORT OF PETITIONER’S
MOTION TO AMEND PETITION FOR
CANCELLATION AND TO JOIN PARTY DEFENDANT

I. INTRODUCTION.

Petitioner EVERETT W. JAMES aka Tad James (“**Petitioner**”) submits the following in support of his Motion To Amend Petition For Cancellation and to Join Party Defendant (the “**Motion**”). A signed version of the proposed Amended Petition For Cancellation (the “**Amended Petition**”) is attached hereto as Exhibit “A,” pursuant to TBMP § 507.01 at 500-38 (3d ed., May 2011). For reference, a black-lined version of the Amended Petition for Cancellation is attached hereto as Exhibit “B,” showing the proposed changes compared to the original Petition for Cancellation.

Petitioner’s Motion seeks an order granting: (i) leave to amend its Petition For Cancellation (the “**Petition**”) to add a newly-discovered claim – viz. that the use-based registration issued to Respondent and Registrant Metagenics, Inc., a Delaware corporation, is *void ab initio* because the application from which it issued was filed by an entity that was not the owner of the

mark, pursuant to 15 U.S.C. § 1051(a); and (ii) to join the original applicant, Metagenics, Inc., a California corporation, as a party defendant, in order to facilitate discovery.

II. PROCEDURAL BACKGROUND AND STATUS.

On March 10, 2011, Petitioner filed his Petition For Cancellation of the subject U.S. Trademark Registration No. 3,467,675 (the “**Registration**”) for “FIRST LINE THERAPY” (the “**Registrant’s Mark**”). The Registration issued from use-based Application Serial No. 77/349868, filed with the U.S. Patent and Trademark Office (the “**Office**”) on December 12, 2007, by Metagenics, Inc., a California corporation.

On or about July 15, 2008, the Registration was issued to Respondent and Registrant Metagenics, Inc., a Delaware corporation.

On April 29, 2011, Registrant filed its Answer And Affirmative Defenses. On June 30, 2011, Registrant, through its counsel of record, served Initial Disclosures.

The close of discovery in this proceeding is currently set for December 27, 2011. The 30-day testimony period for Petitioner is currently scheduled to open on February 25, 2012.

III. ARGUMENT.

A. The Proposed Amendment Should Be Allowed.

“Amendments to pleadings in inter partes proceedings before the Board are governed by Fed. R. Civ. P. 15. Amendments in general are governed by Fed. R. Civ. P. 15(a).” TBMP § 507.01 at 500-38 (3d ed., May 2011). “Pleadings in a cancellation proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court.” 37 CFR § 2.115. Pursuant to Fed. R. Civ. P. 15(a), “a party may amend the party’s pleading . . . by leave of court . . . and leave shall be freely given when justice so requires.”

In view thereof, the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the

rights of the adverse party or parties. This is so even when a plaintiff seeks to amend its complaint to plead a claim other than those stated in the original complaint, including a claim based on a registration issued to or acquired by plaintiff after the filing of the original complaint.

Id. at 500-39. See e.g., Hurley International LLC v. Volta, 82 USPQ2d 1339, 1341 (TTAB 2007) (amendment allowed to add claim that opposed application was *void ab initio* for fraud).

In this case, Petitioner’s Motion similarly seeks to add a newly discovered claim, prior to the closing date for discovery¹. As stated in the attached Declaration of Petitioner’s Counsel (“Dec.”), Petitioner’s counsel only recently discovered that, on information and belief, the correction made by Registrant’s counsel to change the state of incorporation of the original applicant – from California to Delaware – invalidated the Registration. See TMEP §§ 1201.02 (b) and (c).

As stated in the proposed attached Amended Petition, the Application was originally filed by Metagenics, Inc., a California corporation incorporated on May 17, 2006 (“**New Cal. Corp.**”), on December 12, 2007. See Amended Petition attached hereto as Exhibit “A” at ¶ 17. Registrant’s counsel, on or about March 6, 2008, requested that the Trademark Examining Attorney amend the Application to change the Applicant’s state of incorporation, as shown in the Application, from California to Delaware. *Id.* at ¶ 19. Consequently, the Registration issued to Respondent and Registrant Metagenics, Inc., a Delaware corporation (“**Metagenics Delaware**”).

However, Registrant’s counsel apparently did not disclose to the Examining Attorney that New. Cal. Corp. was a separate and existing corporate entity on the date it filed the Application. *Id.* at ¶¶ 13-22. Moreover, New Cal. Corp. did not own Registrant’s Mark as of the

¹ The Motion also seeks to amend the Petition to reflect the fact that, since the date the Petition was filed, one of Petitioner’s pleaded applications has issued as a registration. See Exhibit “B” attached hereto at ¶ 2(c).

date it filed the Application because Metagenics Delaware had previously acquired all trademark rights from another entity, Metagenics, Inc., a California corporation previously incorporated on April 25, 1983 (“**Old Cal. Corp.**”), pursuant to a Certificate of Ownership And Merger Re Merger of Metagenics, Inc., A California Corporation, Into Metagenics, Inc., A Delaware Corporation, which merger was effective on May 11, 2006. Id. The merger document, a copy of which is attached hereto as Exhibit “A” to the Amended Petition (attached hereto as Exhibit “A”), was not filed in the subject Application, nor was it produced or disclosed by Respondent in this proceeding. It was discovered in the file for another registration -- U.S. Registration No. 2,818,514 for “FIRST LINE THERAPY,” registered on the Supplemental Register -- and not recorded in the Assignment Division at Reel 004475/Frame 0505 until February 14, 2011.

Thus, it is apparent that, although Metagenics Delaware was the owner of the trademark rights of Old Cal. Corp., including the rights to “FIRST LINE THERAPY,” a separate and then existing entity, New Cal. Corp., filed the Application even though it did not own the subject mark as of the date of the filing. The Registration that issued from the Application is therefore *void ab initio*. 15 U.S.C. § 1051(a). This statutory ownership requirement cannot be waived. See Huang v. Tzu Wei Chen Food Co., Ltd., 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988).

Moreover, to the extent the Motion, if granted, would add a claim of Registrant’s non-ownership under Section 1(a) of the Lanham Act, Petitioner submits that Registrant would not be unduly prejudiced. The discovery closing date is not until December 27, 2011. See Dec. at ¶ 7. Discovery is ongoing, and if the Motion is granted, the discovery closing and testimony dates will likely be reset. On the other hand, denial of the Motion would run contrary to the policy favoring the adjudication of all claims in one proceeding and the interests of justice.

B. Metagenics, Inc., a California Corporation, Should Be Added As An Additional Party Defendant.

Petitioner's Motion also seeks to add Metagenics, Inc., a California corporation – New. Cal. Corp. – as an additional party defendant.

As alleged in the attached Amended Petition, New. Cal. Corp. was the original applicant in the Application that matured into the Registration issued to Respondent and Registrant Metagenics Delaware. However, New Cal. Corp. was an entity separate from Metagenics Delaware, as of the date that New Cal. Corp. filed the Application, and it did not own the trademark rights to the subject mark.

New Cal. Corp. has the same address as Metagenics Delaware. At the time New Cal. Corp. filed the Application, its attorney was the same attorney now designated as attorney of record for Metagenics Delaware. However, when Respondent Metagenics Delaware was asked in this proceeding to produce any and all documents “that evidence, refer, or relate to the corporate existence or status of Metagenics, Inc., a California corporation,” Respondent Metagenics Delaware, through counsel, asserted a multitude of objections without indicating that any of the responsive documents would be produced:

REQUEST FOR PRODUCTION NO. 9:

All documents that evidence, refer, or relate to the corporate existence or status of Metagenics, Inc., a California corporation.

RESPONSE TO REQUEST NO. 9:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its [sic] is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

See Registrant's Responses to Petitioner's First Set of Interrogatories And First Request For Production of Documents, attached hereto as Exhibit "C" at p. 24.

Similarly, when Respondent Metagenics Delaware was asked to produce any and all documents "that specify or describe the corporate relationship between Registrant and Metagenics, Inc., a California corporation," Respondent Metagenics Delaware objected to the request but refused to produce any responsive documents:

REQUEST FOR PRODUCTION NO. 9:

All documents that specify or describe the corporate relationship between Registrant and Metagenics, Inc., a California corporation.

RESPONSE TO REQUEST NO. 9:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its [sic] is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

Id. at p. 29.

In view of Metagenics Delaware's inexplicable refusal to produce any documents relating to New Cal. Corp. – Metagenics, Inc, a California corporation – Petitioner respectfully requests that New Cal. Corp. be joined in this proceeding in order to facilitate discovery.

IV. CONCLUSION.

For all the foregoing reasons, Petitioner respectfully submits that the Motion should be granted and that an order should be entered granting leave for Petitioner to file the attached Amended Petition For Cancellation, and joining the original applicant, Metagenics, Inc., a California corporation, as a party defendant.

DATED: Honolulu, Hawaii this 21st day of September, 2011.



Martin E. Hsia, Reg. No. 32,471
CADES SCHUTTE
A Limited Liability Law Partnership
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
Tel: (808) 521-9200
Attorney for Petitioner
EVERETT W. JAMES

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| EVERETT W. JAMES aka TAD JAMES, |) | |
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| Petitioner, |) | |
| |) | Cancellation No. 92/053787 |
| v. |) | |
| |) | Registration No. 3,467,675 |
| METAGENICS, INC., a Delaware corporation, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

DECLARATION OF COUNSEL

I, MARTIN E. HSIA, hereby declare as follows:

1. I am a partner of Cades Schutte A Limited Liability Law Partnership, counsel of record in this proceeding for Petitioner, and am duly authorized to make this declaration, which is based upon my personal knowledge and information unless otherwise stated.
2. Attached hereto as Exhibit "A" is a true and correct copy of Petitioner's Amended Petition For Cancellation.
3. Attached hereto as Exhibit "B" is a true and correct copy of a black-lined version of the Petitioner's Amended Petition for Cancellation, showing the proposed amendments.
4. Attached hereto as Exhibit "C" is a true and correct copy of Registrant's Responses to Petitioner's First Set of Interrogatories and First Request for Production of Documents, dated September 15, 2011.

5. On March 10, 2011, Petitioner filed his Petition For Cancellation of the subject U.S. Trademark Registration No. 3,467,675 (the “**Registration**”) for “FIRST LINE THERAPY” (the “**Registrant’s Mark**”).

6. On April 29, 2011, Registrant filed its Answer And Affirmative Defenses. On June 30, 2011, Registrant, through its counsel of record, served Initial Disclosures.

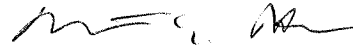
7. The close of discovery in this proceeding is currently set for December 27, 2011. The 30-day testimony period for Petitioner is currently scheduled to open on February 25, 2012.

8. Petitioner’s counsel only recently discovered that, on information and belief, the correction made by Registrant’s counsel to change the state of incorporation of the original applicant – from California to Delaware – invalidated the Registration.

9. The merger document, a copy of which is attached hereto as Exhibit “A” to the Amended Petition (attached hereto as Exhibit “A”), was not filed in the subject Application, nor was it produced or disclosed by Respondent in this proceeding. It was discovered in the file for another registration -- U.S. Registration No. 2,818,514 for “FIRST LINE THERAPY,” registered on the Supplemental Register -- and not recorded in the Assignment Division at Reel 004475/Frame 0505 until February 14, 2011.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

DATED: Honolulu, Hawaii this 21st day of September, 2011.



Martin E. Hsia, Reg. No. 32,471

EXHIBIT “A”

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,467,675
Mark: "FIRST LINE THERAPY"
Date of Issue: July 15, 2008

| | | |
|--|---|----------------------------|
| EVERETT W. JAMES aka TAD JAMES, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| METAGENICS, INC., a Delaware Corporation, |) | Cancellation No. 92/053787 |
| |) | |
| Respondent. |) | Registration No. 3,467,675 |
| and |) | |
| |) | |
| METAGENICS, INC., a California corporation |) | |
| |) | |
| Additional Party Defendant. |) | |
| _____ |) | |

AMENDED PETITION FOR CANCELLATION

EVERETT W. JAMES, a United States citizen ("**Petitioner**"), having a business address at 1453 Foothills Village Drive, Henderson, Nevada 89012, believes he has been and will be damaged by U.S. Registration 3,467,675 (the "**Registration**") for "FIRST LINE THERAPY" (the "**Registrant's Mark**"), which issued on July 15, 2008, to METAGENICS, INC., a Delaware corporation ("**Registrant**"), whose mailing address is 100 Avenida La Pata, San Clemente, California 92673, and hereby petitions to cancel the same.

As grounds therefor, Petitioner alleges as follows:

EXHIBIT A

1. Petitioner is the holder of the following U.S. Trademark Registrations for his mark “TIME LINE THERAPY” (“**Petitioner's Mark**”), which registrations have become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065:

(a) Registration No. 1,818,198 for “educational services; namely, conducting classes and seminars in the field of self-improvement” in International Class 41, issued on January 25, 1994; and

(b) Registration No. 1,890,438 for “prerecorded video tapes featuring lectures in the field of self-improvement and prerecorded audio tapes featuring lectures in the field of self-improvement” in International Class 9, issued on April 18, 1995.

2. Petitioner also owns various U.S. trademark registrations, and has filed applications for Petitioner’s Mark, including (without limitation) the following:

(a) U.S. Registration No. 3,596,997 for “Audio recordings featuring lectures in the field of self-improvement and video recordings featuring lectures in the field of self-improvement,” in International Class 9, issued on March 31, 2009;

(b) U.S. Trademark Application Serial No. 77/851,026 for “Educational services, namely providing on-line non-downloadable audio lectures in the field of self-improvement; and educational services, namely providing on-line non-downloadable video lectures in the field of self-improvement” in International Class 41, filed on October 16, 2009; and

(c) U.S. Trademark Registration No. 3,975,310 for “TIME LINE THERAPY” covering “Audio recordings featuring lectures in the field of self-improvement; downloadable audio recordings featuring lectures in the field of self-improvement; video recordings in the field

of self-improvement; downloadable video recordings in the field of self-improvement; and media players” in International Class 9, issued on June 7, 2011.

3. The goods and services covered by Petitioner’s registrations for “TIME LINE THERAPY” are collectively referred to herein as the “**Petitioner’s Goods and Services.**”

4. Petitioner’s registrations are valid and subsisting and remain in full force and effect, as evidence of the validity, and of Petitioner’s exclusive ownership of, and the right to use, “TIME LINE THERAPY,” or any mark confusingly similar thereto, or which causes the dilution thereof, for Petitioner’s Goods and Services and all goods and/or services related thereto.

5. Petitioner’s registrations do not contain any restrictions as to trade channels or purchasers.

6. For many years, Petitioner has continuously advertised, sold and distributed Petitioner’s Goods and Services in commerce under his mark “TIME LINE THERAPY” throughout the United States and the World. Petitioner has developed an exceedingly valuable goodwill with respect to his mark “TIME LINE THERAPY.”

7. Since at least as early as September 1987, Petitioner has had extensive, exclusive, and continuous use in commerce of Petitioner’s Mark in connection with educational services; namely, conducting classes and seminars in the field of self-improvement.

8. Since at least as early as July 1989, Petitioner has had extensive, exclusive, and continuous use in commerce of Petitioner’s Mark in connection with prerecorded video tapes featuring lectures in the field of self-improvement and prerecorded audio tapes featuring lectures in the field of self-improvement.

9. Petitioner has also acquired common law rights to the mark, “TIME LINE THERAPY”, in connection with classes and seminars in the field of self-improvement.

10. By virtue of his efforts, the expenditure of considerable sums for advertising and promotional activities, and by virtue of the excellence of Petitioner’s Goods and Services, Petitioner has gained for his mark “TIME LINE THERAPY” a most valuable reputation.

11. Petitioner’s Mark, “TIME LINE THERAPY,” is famous under 15 U.S.C. § 1125(c)(1).

12. Petitioner’s Mark, “TIME LINE THERAPY,” is famous as to educational services; namely, conducting classes and seminars in the field of self-improvement, and as to prerecorded video tapes featuring lectures in the field of self-improvement and prerecorded audio tapes featuring lectures in the field of self-improvement under 15 U.S.C. § 1125(c)(1).

13. On information and belief, on or about April 25, 1983, Metagenics, Inc. was incorporated as a California corporation (“**Old Cal. Corp.**”).

14. On information and belief, on May 11, 2006, Old Cal. Corp. merged with and into a Delaware corporation having the same name (Metagenics, Inc.) and address pursuant to or as evidenced by a Certificate of Ownership And Merger Re Merger of Metagenics, Inc., A California Corporation, Into Metagenics, Inc., A Delaware Corporation (“**Metagenics Delaware**”), a true and correct copy of which is attached hereto as Exhibit “A.”

15. On information and belief, Metagenics Delaware became the owner of Registrant’s Mark, “FIRST LINE THERAPY,” as of the May 11, 2006, effective date of the merger.

16. On or about May 17, 2006, on information and belief, another corporation having the same name (Metagenics, Inc.) and address as Metagenics Delaware was incorporated as a California corporation (“**New Cal. Corp.**”).

17. On December 12, 2007, on information and belief, New Cal. Corp. (not Registrant Metagenics Delaware), filed with the U.S. Patent and Trademark Office (the “**Office**”) trademark application serial no. 77/349868 for registration of Registrant’s Mark, “FIRST LINE THERAPY” (the “**Application**”). A true and correct copy of the Application, as filed by New. Cal. Corp., is attached hereto as Exhibit “B.”

18. As of the date that the Application was filed, December 12, 2007, New Cal. Corp. was in existence and was the original applicant of the Application, even though Metagenics Delaware – not applicant New. Cal. Corp. – owned Registrant’s Mark pursuant to the merger.

19. On or about March 6, 2008, on information and belief, Metagenics Delaware or its representative requested that the Trademark Examining Attorney amend the Application to change the Applicant’s state of incorporation, as shown in the Application, from California to Delaware. A true and correct copy of the Examiner’s Amendment sent on March 6, 2008, is attached hereto as Exhibit “C.”

20. The change of applicant from New Cal. Corp. to Metagenics Delaware was not a correctable defect. TMEP §§ 1201.02(b) and (c).

21. On or about July 15, 2008, U.S. Registration No. 3,467,675 issued from the Application to Registrant Metagenics Delaware (the “**Registration**”).

22. The Registration is void because New Cal. Corp. was not the owner of Registrant’s Mark at the time the Application was filed by New Cal. Corp. 15 U.S.C. § 1051(a).

23. The Registration covers “Printed educational materials and printed practice management materials for healthcare practitioners, namely, printed books for patient education on the subject of health and nutrition, printed books for practice management on the subjects of health and nutrition, printed books for professional education on the subjects of health and nutrition, posters and brochures for patient education and professional education on the subjects of health and nutrition,” in International Class 16 and “Educational and practice management seminars for healthcare practitioners in the fields of health and nutrition,” in International Class 41 (collectively, “**Registrant’s Goods and Services**”).

24. The Registration is not restricted as to channels of trade or purchasers.

25. Registrant’s Goods and Services are related to Petitioner’s Goods and Services.

26. Registrant’s “Educational and practice management seminars for healthcare practitioners in the fields of health and nutrition,” in International class 41 are related to Petitioner’s “Educational services; namely, conducting classes and seminars in the field of self-improvement,” in International class 41.

27. Consumers are likely to be confused as to whether the source of Registrant’s Goods and Services and the source of Petitioner’s Goods and Services are the same, or are related or otherwise affiliated to one another.

28. The circumstances surrounding and otherwise pertaining to the marketing of Registrant’s Goods and Services and Petitioner’s Goods and Services are such that said goods and/or services are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source.

29. Educational services in the field of health and nutrition and educational services in the field of self-improvement are often marketed and sold under the same mark, as shown by

U.S. Trademark Registration No. 3,596,638 for “RIVERBEND COMMUNICATIONS” for “*Education and entertainment services*, namely, radio programming services and production of radio programs in the field of news, sports, current events, music; educational services, namely, forums, workshops, seminars and programs *in the field of* personal finance, real estate, business, *health and nutrition*, religion, *self-improvement* and entertainment in the nature of online computer games and contests via radio, Internet, and satellite systems; providing information in the field of news, sports, current events, music, and education and entertainment via radio, Internet, and satellite systems,” in International Class 41, a true and correct copy of which is attached hereto as Exhibit “D” (emphasis added).

30. Registrant’s books and brochures and Petitioner’s audio-recordings and video recordings are often marketed and sold under the same mark, as shown by:

(a) U.S. Trademark Registration No. 3,861,097 for “ANYTHING IS POSSIBLE” for “*Audio and video recordings* featuring content in the fields of psychological self-help, self awareness, and the power of positive thinking,” in International Class 9 and “*Books* in the fields of psychological self-help, self awareness, and the power of positive thinking; Printed instructional, educational, and teaching materials in the field of psychological self-help, self awareness, and the power of positive thinking; Posters,” in International class 16, a true and correct copy of which is attached hereto as Exhibit “E” (emphasis added);

(b) U.S. Trademark Registration No. 3,871,764 for “SINGIN’ & SINGIN’” for “Computer software featuring musical sound recordings and *musical video recordings*; Educational kit comprising DVDs featuring secondary level curriculum on all scientific disciplines, along with teacher guides, sold as a unit; Educational software featuring instruction in mathematics,” in International Class 9 and “Educational and learning publications, namely,

booklets and flash cards on a variety of educational disciplines in pre-school through eighth grade; Educational kits sold as a unit in the field of mathematics consisting primarily of educational *books*, flash cards and worksheets, and also including an educational DVD; Printed educational materials in the field of mathematics; Printed instructional, educational, and teaching materials in the field of mathematics,” in International class 16, a true and correct copy of which is attached hereto as Exhibit “F” (emphasis added); and

(c) U.S. Trademark Registration No. 3,903,506 for “CREATING IRRESISTIBLE CONNECTIONS” for “Downloadable educational *audio* files, text files and *video* materials in the field of personal relationships and dating and romance” in International Class 9 and “*Books, brochures*, printed educational material providing information in the field of personal relationships and dating and romance,” in International class 16, a true and correct copy of which is attached hereto as Exhibit “G” (emphasis added).

31. Two of the three words in Registrant’s Mark and Petitioner’s Mark are identical, namely, “LINE” and “THERAPY.”

32. “First” is a concept that is related to “Time.” See Exhibit “H” (stating that “First” means “preceding all others in *time*, order or importance.”) (emphasis added).

33. Registrant’s Mark “FIRST LINE THERAPY” is confusingly similar to Petitioner’s Mark “TIME LINE THERAPY.”

34. Registrant also holds U.S. Registration 2,818,514 for Registrant’s Mark covering Registrant’s Goods and Services, which issued on the Supplemental Register on February 24, 2004 (the “**Supplemental Registration**”).

35. On August 6, 2003, Registrant's trademark application serial no. 76/433454 (from which the Supplemental Registration issued) was finally refused registration on the Principal Register because Registrant's Mark merely describes Registrant's Goods and Services, specifically, "applicant's entire mark FIRST LINE THERAPY is descriptive."

36. On October 28, 2003, in response to the August 6, 2003 final refusal for descriptiveness, Metagenics Delaware's predecessor amended trademark application serial no. 76/433454 to seek registration on the Supplemental Register, thereby resulting in the Supplemental Registration.

37. Registrant's Mark, "FIRST LINE THERAPY," is merely descriptive as applied to Registrant's Goods and Services. 15 U.S.C. § 1052(e)(1).

38. Registrant's Mark has not acquired secondary meaning for Registrant's Goods and Services and therefore is not entitled to be registered on the Principal Register.

39. If Registrant is permitted to retain U.S. Registration No. 3,467,675, and thereby the *prima facie* exclusive right to use in commerce Registrant's Mark in connection with services identical or related to Petitioner's Goods and Services, confusion in trade is likely to result from any concurrent use of Petitioner's Mark and Registrant's Mark to the detriment of Petitioner, who has expended considerable sums and effort in promoting his mark "TIME LINE THERAPY". Any objection, or fault found with the Registrant's Goods and Services marketed under Registrant's Mark would reflect on, and injure, the reputation Petitioner has established for goods and services sold in connection with its mark "FIRST LINE THERAPY."

40. The continued use and registration of Registrant's Mark would result in confusion, mistake, and/or deception as to the source or origin of the Registrant's Goods and Services, leading consumers to believe that they are somehow affiliated with, approved,

sponsored, or licensed by Petitioner, or otherwise emanate from Petitioner, resulting in the loss of sales to Petitioner. 15 U.S.C. § 1052(d).

41. The continued use and registration of Registrant's Mark, concurrently with "TIME LINE THERAPY," will become a source of irreparable damage and injury to Petitioner's reputation and goodwill through the generation of confusion, mistake, and/or deception, the dilution of Petitioner's registered marks, and the diminution of Petitioner's ability to control the quality of the goods and services provided thereunder because consumers are likely to attribute the source of Registrant's Goods and Services to Petitioner.

42. The continued use and registration of Registrant's Mark is likely to dilute, and/or will dilute, the distinctiveness of Petitioner's Mark "TIME LINE THERAPY." 15 U.S.C. § 1125(c).

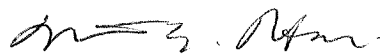
43. If Registrant is permitted to rely on and/or retain the Registration, a cloud will be placed on Petitioner's title in and to his mark "TIME LINE THERAPY," and on his right to enjoy the free and exclusive use thereof in connection with the sale of his goods and services, all to the damage and harm of Petitioner.

44. There is no issue as to priority of use. As evidenced by the registrations identified above, Petitioner has been using his mark "TIME LINE THERAPY" since as early as September 1987, and he filed his applications for his incontestable registrations in 1992. Registrant indicates a date of first use of September 2002 for Registrant's Goods and Services.

The fee required by 37 C.F.R. § 2.6(a)(16) is enclosed herewith.

WHEREFORE, Petitioner respectfully requests the cancellation of U.S. Registration No. 3,467,675 for "FIRST LINE THERAPY" issued on July 15, 2008, pursuant to 15 U.S.C. § 1064.

DATED: Honolulu, Hawaii this 21st day of September, 2011.



Martin E. Hsia, Reg. No. 32,471
CADES SCHUTTE LLP
A Limited Liability Law Partnership
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
Tel: (808) 521-9200
Attorney for Petitioner
EVERETT W. JAMES

EXHIBIT “A”

TRADEMARK ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

| | | | |
|-----------------------------|-----------------------|-------------------|-------------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | MERGER | | |
| EFFECTIVE DATE: | 05/11/2006 | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| Metagenics, Inc. | | 04/25/2006 | CORPORATION: CALIFORNIA |
| RECEIVING PARTY DATA | | | |
| Name: | Metagenics, Inc. | | |
| Street Address: | 100 Avenida La Pata | | |
| City: | San Clemente | | |
| State/Country: | CALIFORNIA | | |
| Postal Code: | 92673 | | |
| Entity Type: | CORPORATION: DELAWARE | | |
| PROPERTY NUMBERS Total: 157 | | | |
| Property Type | Number | Word Mark | |
| Serial Number: | 76407599 | ACTIFOLATE | |
| Serial Number: | 76449727 | ACTIVCOAT | |
| Serial Number: | 75502805 | ADRENOGEN | |
| Serial Number: | 76371061 | ADRESET | |
| Serial Number: | 76432478 | ADVACLEAR | |
| Serial Number: | 76471731 | ALAPARS | |
| Serial Number: | 76554759 | AMYLOSTAR | |
| Serial Number: | 75475398 | ANDROGRAPHIS PLUS | |
| Serial Number: | 78354947 | BIFOVIDEN ID | |
| Serial Number: | 75714973 | BIOPURE PROTEIN | |
| Serial Number: | 76302941 | BIOSOM | |
| Serial Number: | 75754844 | BLACK COHOSH PLUS | |
| Serial Number: | 75470960 | BONE BUILDER | |

900183837

EXHIBIT A

TRADEMARK
REEL: 004475 FRAME: 0505

CH \$3940.00 76407599

| | | |
|----------------|----------|------------------------|
| Serial Number: | 78582665 | BONE BUILDER |
| Serial Number: | 78833294 | BXESSENTIALS |
| Serial Number: | 73703300 | CAL APATITE |
| Serial Number: | 75754845 | CAL APATITE PLUS |
| Serial Number: | 76313588 | CAL MATRIX |
| Serial Number: | 75907613 | CANDIBACTIN-AR |
| Serial Number: | 75903629 | CANDIBACTIN-BR |
| Serial Number: | 74406984 | CARBOPLEX |
| Serial Number: | 76357565 | CARDIOGENICS |
| Serial Number: | 76298745 | CELAPRO |
| Serial Number: | 76279289 | CENITOL |
| Serial Number: | 76269699 | CERALIN |
| Serial Number: | 75591141 | CHASTEBERRY PLUS |
| Serial Number: | 76357864 | CHOLAREST |
| Serial Number: | 76297567 | CHONDRO CARE |
| Serial Number: | 74325884 | COLLAGENICS |
| Serial Number: | 75638959 | COQ-10 ST |
| Serial Number: | 76349910 | CORTICO-B5B6 |
| Serial Number: | 75045418 | |
| Serial Number: | 76320459 | ENDEFEN |
| Serial Number: | 75245553 | ENDURA |
| Serial Number: | 74649024 | ENDURA |
| Serial Number: | 74037714 | ENDURA |
| Serial Number: | 74199862 | ENDURA |
| Serial Number: | 76312659 | ENDURABOLIC |
| Serial Number: | 74608074 | ENERGENICS |
| Serial Number: | 76029694 | EPA-DHA COMPLEX |
| Serial Number: | 75937623 | EPA-DHA EXTRA STRENGTH |
| Serial Number: | 75840666 | ESSENTIAL DEFENSE |
| Serial Number: | 78401237 | ESTRIUM |
| Serial Number: | 76376566 | ESTRO FACTORS |
| Serial Number: | 74503119 | ETHICAL NUTRIENTS |
| Serial Number: | 75591146 | EXHILARIN |
| Serial Number: | 76459253 | EXPRESSYN |
| Serial Number: | 76491778 | EXPRESSYN |

| | | |
|----------------|----------|---|
| Serial Number: | 75848784 | EZ FLEX |
| Serial Number: | 75322699 | FEM ESSENTIALS |
| Serial Number: | 75337036 | FEM ESTRO |
| Serial Number: | 75344356 | FEM ESTRO HP |
| Serial Number: | 75325924 | FEM ESTROPLEX |
| Serial Number: | 75328201 | FEM PRENATAL |
| Serial Number: | 75541544 | FENUGREEK PLUS |
| Serial Number: | 75714975 | FIBROPLEX |
| Serial Number: | 76433454 | FIRST LINE THERAPY |
| Serial Number: | 78637328 | FIRST START |
| Serial Number: | 76375154 | FOLAPRO |
| Serial Number: | 76193520 | 4R |
| Serial Number: | 78433333 | FUNCTIONAL MEDICINE RESEARCH CENTER |
| Serial Number: | 75045424 | GENETIC POTENTIAL THROUGH NUTRITION |
| Serial Number: | 76085204 | GLA FORTE |
| Serial Number: | 76357566 | GLUCO-FACTORS |
| Serial Number: | 75907611 | GLUTAGENICS |
| Serial Number: | 76353599 | GLYCOGENICS |
| Serial Number: | 78268214 | GUARD'N BAR |
| Serial Number: | 76320460 | HEMAGENICS |
| Serial Number: | 76348036 | HEPATAPLEX |
| Serial Number: | 75273551 | HERBULK |
| Serial Number: | 78409012 | SCIENTIFICALLY TESTED IDENTITY-CERTIFIED STRAINS ID |
| Serial Number: | 75693681 | INFLAVONOID |
| Serial Number: | 75541562 | INFLAVONOID INTENSIVE CARE |
| Serial Number: | 76462389 | INTESOL |
| Serial Number: | 78272882 | JOINT FOCUS |
| Serial Number: | 76490077 | KAPREX |
| Serial Number: | 78354956 | LACTOVIDEN |
| Serial Number: | 75541564 | LICORICE PLUS |
| Serial Number: | 76296932 | LIPOTAIN |
| Serial Number: | 76490078 | LUDUXIN |
| Serial Number: | 74276998 | MAXI DOPHILUS |
| Serial Number: | 75607223 | MAXIGEST |
| Serial Number: | 75405125 | METABOTANICA |

| | | |
|----------------|----------|--|
| Serial Number: | 76080758 | METABOTANICA METHOD |
| Serial Number: | 76368450 | METAEHEALTH |
| Serial Number: | 76368680 | META-EHEALTH.COM |
| Serial Number: | 76359025 | META FIBER |
| Serial Number: | 75083349 | METAGENICS GENETIC POTENTIAL THROUGH NUTRITION |
| Serial Number: | 74276999 | METAGENICS |
| Serial Number: | 78272071 | METAGENICS |
| Serial Number: | 75714275 | METAGEST |
| Serial Number: | 76296600 | META I 3 C |
| Serial Number: | 76357564 | META LIPOATE |
| Serial Number: | 76975674 | METAPROTEOMICS |
| Serial Number: | 75186976 | METAZYME |
| Serial Number: | 76080757 | |
| Serial Number: | 76357299 | MITOCHONDRIAL RESUSCITATE |
| Serial Number: | 75691281 | MULTIGENICS |
| Serial Number: | 74276995 | MYCEL |
| Serial Number: | 73457753 | MYCELIZED |
| Serial Number: | 76308957 | MYCOFERON |
| Serial Number: | 78577836 | MYCOTAKI |
| Serial Number: | 75870732 | MYOCALM |
| Serial Number: | 75870734 | MYOCALM P.M. |
| Serial Number: | 76269785 | NEUROSOL |
| Serial Number: | 75591139 | THE NUTRITION MASTERS COURSE |
| Serial Number: | 76336575 | OSTEO-GENICS |
| Serial Number: | 75772959 | OXYGENICS |
| Serial Number: | 74708833 | PAREX |
| Serial Number: | 74665711 | PERFECT PROTEIN |
| Serial Number: | 75541543 | PERFECT SOY |
| Serial Number: | 76465390 | PERIMINE |
| Serial Number: | 75577566 | PHARMASOY |
| Serial Number: | 75237514 | PHYTO COMPLETE |
| Serial Number: | 74630879 | PROBIOPLEX |
| Serial Number: | 74690022 | PROBIO-PROTEIN |
| Serial Number: | 74689679 | PROBIO-SACCHARIDE |
| Serial Number: | 78503966 | PROTEIN FUSION |

TRADEMARK

REEL: 004475 FRAME: 0508

| | | |
|----------------|----------|---|
| Serial Number: | 78310909 | PROTRYPSIN |
| Serial Number: | 78439683 | PURITY CERTIFIED THIRD PARTY ASSAYED P |
| Serial Number: | 78278622 | SELESTRO |
| Serial Number: | 75756630 | SERENAGEN |
| Serial Number: | 75835677 | SINUPLEX |
| Serial Number: | 78405139 | SOMNOLIN |
| Serial Number: | 75548134 | SPECTRASOY |
| Serial Number: | 75104326 | SPECTRAZYME |
| Serial Number: | 75541556 | STRESS RESCUE |
| Serial Number: | 75743274 | SUPERGARLIC 6000 |
| Serial Number: | 78405152 | TESTRALIN |
| Serial Number: | 76357298 | THYROSOL |
| Serial Number: | 75835676 | TRAN-Q |
| Serial Number: | 75397476 | TRIBULUS SYNERGY |
| Serial Number: | 76357221 | ULCINEX |
| Serial Number: | 73820434 | ULTRABALANCE |
| Serial Number: | 74024453 | ULTRABALANCE |
| Serial Number: | 78464112 | ULTRA FLORA IB |
| Serial Number: | 78447540 | VASOTENSIN |
| Serial Number: | 78288540 | ZINLORI 75 |
| Serial Number: | 76553169 | WELLNESS ESSENTIALS |
| Serial Number: | 76503599 | UNLOCKING THE SECRETS OF GENETIC POTENTIAL THROUGH NUTRITION |
| Serial Number: | 76437968 | ULTRACLEAR MACRO |
| Serial Number: | 75943486 | ULTRAGLYCEMX |
| Serial Number: | 75937622 | ULTRA PAREX |
| Serial Number: | 75933824 | ULTRAINFLAMX |
| Serial Number: | 75907612 | ULTRA CLA |
| Serial Number: | 75756632 | VENAPLEX |
| Serial Number: | 75756631 | VESSEL CARE |
| Serial Number: | 75436582 | ULTRACLEAR PLUS |
| Serial Number: | 75006521 | ULTRACARE FOR KIDS |
| Serial Number: | 74665710 | UNIPRO'S PERFECT PROTEIN |
| Serial Number: | 74626829 | ULTRA FLORA PLUS |
| Serial Number: | 74503118 | UNIPRO |

| | | |
|----------------|----------|--------------------|
| Serial Number: | 74349296 | ULTRACLEAR SUSTAIN |
| Serial Number: | 74276996 | UNIPRO |
| Serial Number: | 74255798 | ULTRAMEAL |
| Serial Number: | 74139223 | ULTRACLEAR |
| Serial Number: | 73517636 | ULTRA DOPHILUS |

CORRESPONDENCE DATA

Fax Number: (949)851-9348

Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

Phone: 9498510633

Email: ocipdocketing@mwe.com

Correspondent Name: Lynne Boisineau, McDermott Will & Emery

Address Line 1: 18191 Von Karman, Suite 500

Address Line 4: Irvine, CALIFORNIA 92612

| | |
|-------------------------|------------------------|
| ATTORNEY DOCKET NUMBER: | 062114-0010 |
| NAME OF SUBMITTER: | Lynne M.J. Boisineau |
| Signature: | /lynne m.j. boisineau/ |
| Date: | 02/14/2011 |

Total Attachments: 3

source=Metagenics_Merger_Doc#page1.tif

source=Metagenics_Merger_Doc#page2.tif

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CERTIFICATE OF OWNERSHIP
AND MERGER
RE MERGER OF
METAGENICS, INC., A CALIFORNIA CORPORATION
INTO
METAGENICS, INC., A DELAWARE CORPORATION

Jeffrey J. Katke and Paul E. Konney certify that:

FIRST: They are the Chairman and Chief Executive Officer and the Secretary, respectively, of Metagenics, Inc., a California corporation (the "Disappearing Corporation").

SECOND: The Disappearing Corporation owns all of the outstanding shares of each class of stock of Metagenics, Inc., a Delaware corporation (the "Surviving Corporation").

THIRD: The Board of Directors of the Disappearing Corporation duly adopted the following resolutions, pursuant to which "Corporation" was defined as Metagenics, Inc., a California corporation and "Surviving Corporation" was defined as Metagenics, Inc., a Delaware corporation:

WHEREAS, the Board has determined that it is in the best interests of the Corporation and its shareholders for the Corporation to reincorporate as a Delaware corporation and to effect such reincorporation by merger (the "Merger") of the Corporation with and into Metagenics Delaware (the "Surviving Corporation"), with the Surviving Corporation being the surviving entity in such Merger and such Merger being effective prior to the consummation of the initial public offering of the Corporation's Common Stock;

NOW, THEREFORE, BE IT RESOLVED, that the Merger is hereby approved substantially upon the following principle terms:

A. The Corporation will merge with and into the Surviving Corporation and the separate existence of the Corporation will cease. The Surviving Corporation's Certificate of Incorporation will not be affected by the Merger and from and after the effectiveness of the Merger, the directors and officers of the Surviving Corporation will continue to be the directors and officers of the Surviving Corporation.

B. Prior to the effectiveness of the Merger, the Surviving Corporation will be registered and qualified to do business in the State of California.

C. Subject to all the restrictions and duties of the Corporation and any requirements of law, upon the effectiveness of the Merger, the Corporation's property, rights, privileges, powers and franchises, and all debts due to the Corporation and each and every other interest of the Corporation shall be vested in and devolved upon the Surviving Corporation without further act or deed.

D. Upon the effectiveness of the Merger, all the rights of creditors and all liens upon any property of the Corporation will be preserved unimpaired, and all debts, liabilities and duties of the Corporation shall be assumed by, and attach to, the Surviving Corporation, and may be enforced against the Surviving Corporation to the same extent as if such debts, liabilities and duties had been incurred or contracted by the Surviving Corporation.

E. Upon the effectiveness of the Merger, (1) each holder of one or more shares of Common Stock, no par value, of the Corporation ("Corporation Common Stock") will receive .40 shares of Common Stock, \$0.001 par value, of the Surviving Corporation ("Surviving Corporation Common Stock") in exchange for each share of Corporation Common Stock then currently held by such holder, rounded up or down to the nearest whole share and (2) each holder of one or more shares of Series A Preferred Stock, no par value, of the Corporation ("Corporation Preferred Stock") will receive one (1) share of Series A Preferred Stock, \$0.001 par value, of the Surviving Corporation in exchange for each share of Corporation Preferred Stock then currently held by such holder, rounded up or down to the nearest whole share. On the effective date of the Merger, all issued and outstanding shares of the capital stock of the Corporation, by virtue of the Merger and without any action on the part of any holder thereof, will no longer be outstanding and shall at such time be cancelled, be retired and cease to exist.

F. Upon the effectiveness of the Merger, each share of capital stock of the Surviving Corporation that was issued and outstanding immediately prior to the Merger will no longer be outstanding and will at such time be cancelled and retired and will cease to exist, without payment of any consideration therefor.

G. Upon the effectiveness of the Merger, each option to acquire one (1) share of Corporation Common Stock that was outstanding immediately prior to the effectiveness of the Merger will be converted into an option to acquire .40 shares of Surviving Corporation Common Stock (the foregoing resolutions set forth in paragraphs (A) – (G), collectively, the "Merger Resolution").

FOURTH: As required by Section 253(a) of the Delaware General Corporation Law, the merger of the Disappearing Corporation into the Surviving Corporation as described in the Merger Resolution has been adopted, approved, certified, executed and acknowledged by the Disappearing Corporation in accordance with the laws of the State of California.

FIFTH: The Surviving Corporation survives the merger and being qualified in the State of California, may be served with process in the State of California in any proceeding for enforcement of any obligation of the Surviving Corporation as well as for enforcement of any obligation of the Surviving Corporation arising from the merger, and it does hereby appoint [CT Corporation] as its agent to accept service of process in any such suit or other proceeding.

SIXTH: The Merger shall be effective on May 11, 2006.

[Signature Page Follows]

We further declare under penalty of perjury under the laws of the State of Delaware that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: April 25, 2006

By: 

Name: Jeffrey J. Katke

Title: Chairman and Chief Executive Officer

By: 

Name: Paul E. Konney

Title: Secretary

EXHIBIT “B”

Trademark/Service Mark Application, Principal Register

Serial Number: 77349868

Filing Date: 12/12/2007

The table below presents the data as entered.

| Input Field | Entered |
|---|--|
| SERIAL NUMBER | 77349868 |
| MARK INFORMATION | |
| *MARK | <u>FIRST LINE THERAPY</u> |
| STANDARD CHARACTERS | YES |
| USPTO-GENERATED IMAGE | YES |
| LITERAL ELEMENT | FIRST LINE THERAPY |
| MARK STATEMENT | The mark consists of standard characters, without claim to any particular font, style, size, or color. |
| REGISTER | Principal |
| APPLICANT INFORMATION | |
| *OWNER OF MARK | Metagenics, Inc. |
| *STREET | 100 Avenida La Pata |
| *CITY | San Clemente |
| *STATE (Required for U.S. applicants) | California |
| *COUNTRY | United States |
| *ZIP/POSTAL CODE (Required for U.S. applicants only) | 92673 |
| LEGAL ENTITY INFORMATION | |
| TYPE | corporation |
| STATE/COUNTRY OF INCORPORATION | California |
| GOODS AND/OR SERVICES AND BASIS INFORMATION | |
| * INTERNATIONAL CLASS | 016 |

EXHIBIT B

| | |
|---|--|
| * IDENTIFICATION | Printed educational materials and printed practice management materials for healthcare practitioners, namely printed books for patient education on the subject of health and nutrition, printed books for practice management on the subjects of health and nutrition, printed books for professional education on the subjects of health and nutrition, posters and brochures for patient education and professional education on the subjects of health and nutrition |
| FILING BASIS | SECTION 1(a) |
| FIRST USE ANYWHERE DATE | At least as early as 09/09/2002 |
| FIRST USE IN COMMERCE DATE | At least as early as 09/11/2002 |
| SPECIMEN FILE NAME(S) | |
| ORIGINAL PDF FILE | <u>.pdf</u> |
| CONVERTED PDF FILE(S) (2 pages) | <u>\\TICRS2\EXPORT14\773\498\77349868\xml1\APP0003.JPG</u> |
| | <u>\\TICRS2\EXPORT14\773\498\77349868\xml1\APP0004.JPG</u> |
| SPECIMEN DESCRIPTION | Patient materials |
| * INTERNATIONAL CLASS | 041 |
| * IDENTIFICATION | Educational and practice management seminars for healthcare practitioners in the fields of health and nutrition |
| FILING BASIS | SECTION 1(a) |
| FIRST USE ANYWHERE DATE | At least as early as 09/09/2002 |
| FIRST USE IN COMMERCE DATE | At least as early as 09/11/2002 |
| SPECIMEN FILE NAME(S) | |
| ORIGINAL PDF FILE | <u>.pdf</u> |
| CONVERTED PDF FILE(S) (4 pages) | <u>\\TICRS2\EXPORT14\773\498\77349868\xml1\APP0005.JPG</u> |
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| ORIGINAL PDF FILE | <u>.pdf</u> |
| CONVERTED PDF FILE(S) (10 pages) | <u>\\TICRS2\EXPORT14\773\498\77349868\xml1\APP0009.JPG</u> |
| | <u>\\TICRS2\EXPORT14\773\498\77349868\xml1\APP0010.JPG</u> |

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| | <u>\\TICRS2\EXPORT14\773\498\77349868\xml1\APP0018.JPG</u> |
| SPECIMEN DESCRIPTION | Website pages |
| ADDITIONAL STATEMENTS SECTION | |
| SECTION 2(f) | The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement. |
| PRIOR REGISTRATION(S) | The applicant claims ownership of U.S. Registration Number(s) 2818514. |
| ATTORNEY INFORMATION | |
| NAME | Dennis H. Cavanaugh |
| FIRM NAME | D H Cavanaugh Associates |
| STREET | 555 Fifth Avenue, 17th Floor |
| CITY | New York |
| STATE | New York |
| COUNTRY | United States |
| ZIP/POSTAL CODE | 10017 |
| PHONE | 212-856-7210 |
| EMAIL ADDRESS | dhc@dhcavanaugh.net |
| AUTHORIZED TO COMMUNICATE VIA EMAIL | Yes |
| CORRESPONDENCE INFORMATION | |
| NAME | Dennis H. Cavanaugh |
| FIRM NAME | D H Cavanaugh Associates |
| STREET | 555 Fifth Avenue, 17th Floor |

| | |
|--|-----------------------|
| CITY | New York |
| STATE | New York |
| COUNTRY | United States |
| ZIP/POSTAL CODE | 10017 |
| PHONE | 212-856-7210 |
| EMAIL ADDRESS | dhc@dhcavanaugh.net |
| AUTHORIZED TO COMMUNICATE VIA EMAIL | Yes |
| FEE INFORMATION | |
| NUMBER OF CLASSES | 2 |
| FEE PER CLASS | 325 |
| *TOTAL FEE DUE | 650 |
| *TOTAL FEE PAID | 650 |
| SIGNATURE INFORMATION | |
| SIGNATURE | /Dennis H. Cavanaugh/ |
| SIGNATORY'S NAME | Dennis H. Cavanaugh |
| SIGNATORY'S POSITION | Attorney |
| DATE SIGNED | 12/12/2007 |

Trademark/Service Mark Application, Principal Register

Serial Number: 77349868

Filing Date: 12/12/2007

To the Commissioner for Trademarks:

MARK: FIRST LINE THERAPY (Standard Characters, see mark)

The literal element of the mark consists of FIRST LINE THERAPY.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Metagenics, Inc., a corporation of California, having an address of

100 Avenida La Pata

San Clemente, California 92673

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 016: Printed educational materials and printed practice management materials for healthcare practitioners, namely printed books for patient education on the subject of health and nutrition, printed books for practice management on the subjects of health and nutrition, printed books for professional education on the subjects of health and nutrition, posters and brochures for patient education and professional education on the subjects of health and nutrition

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 016, the mark was first used at least as early as 09/09/2002, and first used in commerce at least as early as 09/11/2002, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Patient materials.

Original PDF file:

.pdf

Converted PDF file(s) (2 pages)

Specimen File1

Specimen File2

International Class 041: Educational and practice management seminars for healthcare practitioners in the fields of health and nutrition

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or

licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 041, the mark was first used at least as early as 09/09/2002, and first used in commerce at least as early as 09/11/2002, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Website pages.

Original PDF file:

.pdf

Converted PDF file(s) (4 pages)

Specimen File1

Specimen File2

Specimen File3

Specimen File4

Original PDF file:

.pdf

Converted PDF file(s) (10 pages)

Specimen File1

Specimen File2

Specimen File3

Specimen File4

Specimen File5

Specimen File6

Specimen File7

Specimen File8

Specimen File9

Specimen File10

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.

The applicant claims ownership of U.S. Registration Number(s) 2818514.

The applicant hereby appoints Dennis H. Cavanaugh of D H Cavanaugh Associates

555 Fifth Avenue, 17th Floor

New York, New York 10017

United States

to submit this application on behalf of the applicant.

Correspondence Information: Dennis H. Cavanaugh

555 Fifth Avenue, 17th Floor

New York, New York 10017

212-856-7210(phone)

dhc@dhcavanaugh.net (authorized)

A fee payment in the amount of \$650 has been submitted with the application, representing payment for 2 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Dennis H. Cavanaugh/ Date Signed: 12/12/2007

Signatory's Name: Dennis H. Cavanaugh

Signatory's Position: Attorney

RAM Sale Number: 5227

RAM Accounting Date: 12/12/2007

Serial Number: 77349868

Internet Transmission Date: Wed Dec 12 11:56:34 EST 2007

TEAS Stamp: USPTO/BAS-64.52.233.171-2007121211563448

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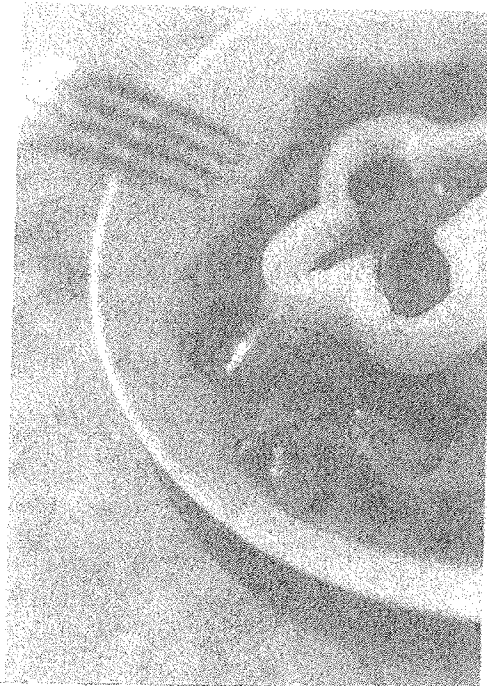
FIRST LINE THERAPY

FirstLineTherapy

Section Two

A Healthy Diet

A Healthy Diet



A Healthy Diet

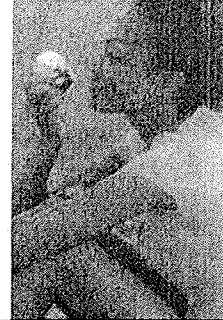
2

Section Two

A Healthy, Balanced Diet

“One should eat to live,
not live to eat.”

Benjamin Franklin



FirstLine™ Guide for a Healthy, Balanced Diet

- 1 Review the instructions given to you along with this book. These may include calorie intake and supplement recommendations.
- 2 Review “What to Eat, How Much & How Often” in this section.
- 3 Review the “Menus” in Section 3.
- 4 Review Table 1 to help you choose foods with a low glycemic index (GI).
- 5 Review Table 2 to help you include good sources of fat in your diet while avoiding the bad.
- 6 Plan 3 *small* meals and 3 *snacks* daily. If a low GI Medical Food has been recommended for you, use it as directed in place of meals or snacks.
- 7 Now begin choosing foods for each meal and snack based on points 1-6 above.
- 8 Include nutritional supplements as directed.
- 9 Drink at least 8 eight-ounce glasses of water daily.



Search for:
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NEW FOR 2008!

♣ [The Depression Pandemic](#)

♣ [The Emerging Therapeutic Target](#)

NEW FOR 2008!

>

Seminars

- Jeffrey Bland, PhD
- Jacob Kornberg, MD
- Jay Lombard, DO
- Robert Rakowski, DC
- FLT Certification Instructors
- 2001 Bland Seminar Series Audio Tapes
- 2002 Bland Seminar Series Audio Tapes
- 2003 Bland Seminar Series Audio Tapes
- Podcasts
- Press Releases
- Reference Library
- MetaDocs Library
- Reuters Health News
- Other Health News
- Political Action
- Registration

Professional Education & Practical Applications

Metagenics Educational Programs collaborate with some of the most outstanding professionals in functional medicine to keep you on the leading edge of nutritional health care with the latest research, concepts, and therapies.

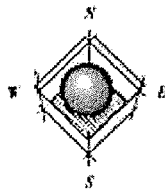
Metagenics Educational Programs bring you support from the finest minds in nutritional and functional medicine to provide valuable in-office training for you and your staff. These programs and practice tools help ensure not only success with your patients—but with your business.

Seminars

Click on the topics below for upcoming dates and locations.

Register today and start expanding your nutritional knowledge!

METAGENICS EDUCATIONAL PROGRAMS



Nutritional Approaches to Wellness

| Title | Focus | Speaker(s) |
|---|--|--|
| The Depression Pandemic | Depression, Endocrine Dysfunction, Sleep Disorders, Neurotransmitter Balance, Womens' Health | Jay Lombard, DO |
| The Emerging Therapeutic Target <i>NEW FOR 2008!</i> | Osteoporosis, Dementia, Cardiovascular Disease, Type 2 Diabetes, Arthritis, Inflammation | Jeffrey S. Bland, PhD |
| Managing the Multiple Causes of Chronic Inflammation | Chronic Inflammation, Immune Dysregulation, <i>FirstLine Therapy</i> | Jacob Kornberg, MD |
| Optimizing Athletic Performance <i>NEW FOR 2008 – 2 Days Only!</i> | Sports Nutrition, Energy Production, Inflammation, Athletic Performance, pH Balance | Robert Rakowski, DC, CCN, DACBN, DIBAK |

FirstLine Therapy & Implementation

| Title | Focus | Speaker(s) |
|-------|-------|------------|
|-------|-------|------------|

Seminars

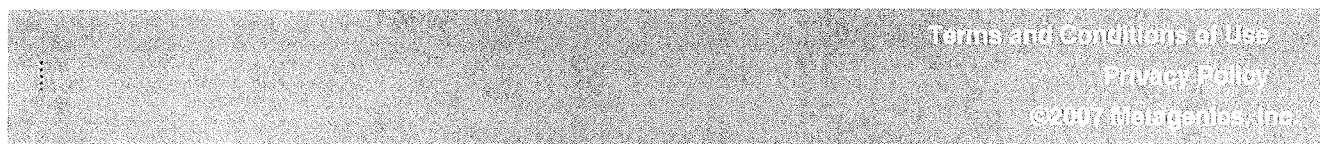
| | | |
|---|---|---|
| <i>FirstLine Therapy</i> Certification Program: Transform Your Practice as You Help Patients <i>Transform Their Lives</i> NEW DATES FOR 2008! | <i>FirstLine Therapy</i> Implementation | Mike Katke Chris Katke Lyra Heller, MA Kristi Hughes, ND |
| <i>FirstLine Therapy</i> Coordinator Training (online) NEW DATES FOR 2008! | <i>FirstLine Therapy</i> Implementation | Various |
| Managing the Multiple Causes of Chronic Inflammation | Chronic Inflammation, Immune Dysregulation, <i>FirstLine Therapy</i> | Jacob Kornberg, MD |

Functional Medicine Clinical Series (FMCS)

| Title | Focus | Speaker(s) |
|-------------------------------------|--|------------|
| Functional Medicine Clinical Series | Gastrointestinal Health, Inflammation, Detoxification, Musculoskeletal Health, Cardiovascular Health, Blood Sugar, Stress Management, Hormone Balance | Various |

Jeffrey Bland Seminar Series Audio Tapes

| Title | Focus | Speaker(s) |
|---------------------------------|--------------------------------|-----------------------|
| 2001 Seminar Series Audio Tapes | Nutritional Neuroendocrinology | Jeffrey S. Bland, PhD |
| 2002 Seminar Series Audio Tapes | Nutritional Endocrinology | Jeffrey S. Bland, PhD |
| 2003 Seminar Series Audio Tapes | Metabolic Biotransformation | Jeffrey S. Bland, PhD |





Search for:

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Examples: 'ultrameal', 'ultraflamx 360', 'inflam'

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- Robert Rakowski, DC
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- 2002 Bland Seminar Series Audio Tapes
- 2003 Bland Seminar Series Audio Tapes
- Podcasts
- Press Releases
- Reference Library
- MetaDocs Library
- Reuters Health News
- Other Health News
- Political Action
- Registration

FLT Certification

FirstLine Therapy® Certification Program:

Transform Your Practice as You Help Patients Transform Their Lives



Become Certified in Therapeutic Lifestyle Changes Using the *FirstLine Therapy* System

Presenters: Mike Katke, Christopher Katke, Lyra Heller, MA,
Kristi Hughes, ND

Overview:

Unhealthy lifestyles are the underlying cause of many chronic yet preventable health problems. As a result, numerous national health organizations now recommend Therapeutic Lifestyle Changes (TLC) as a **fundamental treatment for a wide variety of common conditions**, such as:

FLT Certification

- Fatigue/Low energy
- High cholesterol
- High blood pressure
- Metabolic syndrome
- Type 2 diabetes
- Overweight/Obesity
- Osteoarthritis
- Chronic low back pain
- Hormone imbalance
- And many others

In spite of this, most practitioners find that time constraints, financial pressures, or lack of appropriate tools and training make it difficult to address lifestyle issues in everyday clinical practice.

The ***FirstLine Therapy* (FLT) Program** is a practical system that saves practitioners time and helps make TLC **clinically effective** and **financially rewarding**.

The ***FirstLine Therapy Certification Program*** is a 3½ day, intensive educational seminar that gives practitioners and lifestyle educators the training and tools they need to **implement a successful TLC program in virtually any clinical setting**. The program will be presented in an interactive format that combines lectures with practice sessions in which participants will have the opportunity to learn and master the use of FLT tools.

By attending, you will learn to:

- Implement a successful TLC program in virtually any clinical setting
- Effectively use the FLT tools and techniques to guide patients to success
- Create your own mission and goals to help you easily incorporate FLT in your existing practice
- Follow the proven program steps of successful FLT implementation: promote, prescribe, test, create a personalized plan, and follow up
- Understand the importance of prescribing FLT
- Use and interpret bioimpedance analysis (BIA) testing to track and motivate patients
- Develop a patient-specific plan to achieve the desired therapeutic outcome

- Teach patients an eating plan that works for quick results and lifelong success
- Incorporate appropriate medical foods and dietary supplements to fit individual patients' needs
- Simply and effectively incorporate exercise and stress management
- Develop a financial model of FLT implementation that works for you and your patients
- Build a successful FLT practice through the support of FLT-certified staff members

A systematic approach for success:

1. Expand your practice and gain new patient referrals
2. Prescribe healthy lifestyle changes to improve long-term health
3. Accurately assess patients through objective testing methods
4. Create personalized plans for individual health needs
5. Organize patient follow-ups to increase motivation and patient success
6. Achieve optimal clinical outcomes and improve your patients' lives

A win-win for your patients and for you!

Don't miss this opportunity for FLT Certification...Register today!

Two Levels of Certification:

Healthcare Provider

Who should attend: Licensed healthcare providers with responsibility to prescribe lifestyle therapy, medical foods, or dietary supplements.

Learn to integrate FLT into your current practice including: how to prescribe and counsel patients regarding

FLT Certification

diet and lifestyle changes, use FLT tools and materials to evaluate and educate your patients, create a productive office and financial structure, and promote FLT in your community.

Lifestyle Educator

Who should attend: Any RN, RD, CCN, LPN, or other licensed or nonlicensed individual with previous experience in health coaching or consulting.


Build and expand existing health knowledge and coaching skills. Learn how to use FLT tools to educate and inspire clients regarding diet and lifestyle changes, and how to use BIA for screening and tracking progress. A framed certificate showing Certification in FLT will be awarded based on successful completion of the test!

NEW! Online Training

Program Coordinator

Who should attend: Office managers, administrators, and key office staff members.

Covers fundamental program elements, FLT tools, and how to work with healthcare providers and key personnel on implementing FLT in clinical practice. Program Coordinators will learn about the implementation worksheet, patient guidebook, and other key aspects of the program. **(No certification offered for Program Coordinators.)**

 [Click here for more information on FLT Program Coordinator training](#)

Upcoming Dates & Locations:

| | |
|-------------------------------|-----------------------------------|
| Wed Jan 16 - Sat Jan 19, 2008 | Minneapolis, MN |
| Thurs March 13 - Sun 16, 2008 | Banff, AB (Canada) |
| Thurs April 10 - Sun 13, 2008 | San Antonio, TX |
| Thurs June 5 - Sun 8, 2008 | Florida (TBA) |
| Thurs July 10 - Sun 13, 2008 | Montreal, QC (in French language) |
| Thurs July 24 - Sun 27, 2008 | Los Angeles, CA |

FLT Certification

| | |
|-----------------------------------|----------------------|
| Thurs September 11 - Sun 14, 2008 | New York, NY |
| Thurs September 25 - Sun 28, 2008 | Seattle, WA |
| Thurs October 16 - Sun 19, 2008 | Chicago, IL |
| Thurs November 6 - Sun 9, 2008 | Toronto, ON (Canada) |
| Thurs November 13 - Sun 16, 2008 | Lake Las Vegas, NV |

Schedule:

Thursday

| | |
|---------------|---|
| 7:30 - 8:00 | REGISTRATION |
| 8:00 - 10:00 | Intro to TLC in Clinical Practice; Healthcare Provider and Lifestyle Educator FLT Education; Fee Structures |
| 10:00 - 10:15 | BREAK |
| 10:15 - 12:00 | Consultation Forms; the Target Patient; Assessing Patient Readiness |
| 12:00 - 1:30 | LUNCH |
| 1:30 - 1:45 | Clinic Implementation; Integration and SMART Goals |
| 1:45 - 3:00 | Creative Consulting: Cultivating a Healing Response |
| 3:00 - 3:30 | BREAK |
| 3:30 - 5:30 | The FLT Initial Interview; Role Playing; Charting the Subjective Visit |

Friday

| | |
|--------------|---|
| 8:00 - 9:15 | FLT Physical Exam; BIA testing |
| 9:15 - 9:45 | BREAK |
| 9:45 - 12:00 | Introductory Interpretation of the BIA OR Intermediate/Advanced BIA & Cases |
| 12:00 - 1:30 | LUNCH |
| 1:30 - 3:00 | Art of Coaching: Sustaining the FLT Relationship |

FLT Certification

| | |
|-------------|---|
| 3:00 - 3:30 | BREAK |
| 3:30 - 5:30 | Advanced Review of the FLT Treatment Plan; EFAs and Supplements |
| 6:00 - 8:00 | Friday Night Reception |

Saturday

| | |
|---------------|--|
| 8:00 - 9:00 | The FLT Diet |
| 9:00 - 9:45 | Being the <i>FirstLine</i> Therapist: Putting all the FLT Pieces Together |
| 9:45 - 10:00 | BREAK |
| 10:00 - 11:30 | Putting All the FLT Pieces Together: Using the Forms; Case Study Examples |
| 11:30 - 12:00 | The FLT Menu Plan Individualized |
| 12:00 - 1:30 | LUNCH |
| 1:30 - 3:30 | <u>Break Out Sessions:</u> Creating the Menu Plan; Q & A OR Review of Conditions with Associated Lab Values and Treatment Plans |
| 3:30 - 4:00 | BREAK |
| 4:00 - 5:30 | Stress Relief/Guided Imagery |

Sunday

| | |
|---------------|---|
| 8:00 - 9:00 | BIA Case Reviews |
| 9:00 - 10:15 | The Initial Visit; Role-Play; the FLT Diet for Your Partner; the Treatment Plan |
| 10:15 - 10:30 | BREAK |
| 10:30 - 11:00 | Introduction to the FLT Presentations; Groups & Classroom |
| 11:00 - 12:15 | Marketing Your FLT Program |
| 12:15 - 1:00 | Q & A; Discussion of Tests; Turn in <i>My FLT Plan</i> |

Cost:

| | |
|---------------------|---------------------------|
| Healthcare Provider | \$495.00 (+GST in Canada) |
|---------------------|---------------------------|

FLT Certification

| | |
|---------------------|--|
| Lifestyle Educator | \$395.00 (+GST in Canada) |
| Repeat Attendance | \$295.00 (+GST in Canada) |
| Program Coordinator | \$125.00 (+GST in Canada) <i>ONLINE ONLY</i> |

Registration Information:

Call Metagenics Customer Service to register: **1-800-692-9400**

To register in Canada please call **1-800-268-6200**

NO REGISTRATION AT THE DOOR

Cancellation notice must be received five working days prior to the seminar to be eligible for a refund.

ABOUT THE PRESENTERS:

Kristi Hughes, ND

Dr. Hughes is a graduate of the National College of Naturopathic Medicine in Portland, Oregon. In 1997, she founded the Center of Natural Healing Arts, which has clinic sites in Minnesota providing various modalities of natural health care in an integrated clinic environment. Dr. Hughes also currently serves as the Secretary of the Minnesota Association of Naturopathic Physicians that addresses the political needs of naturopathic medicine. She has implemented a very successful *FirstLine Therapy* program in her own practice and provides practical advice from firsthand experience.

Lyra Heller, MA

Lyra is an anthropologist with 35 years of experience and expertise in the areas of complementary and alternative medicine. She is also a co-founder of Metagenics, Inc., a life sciences company and leading developer and manufacturer of science-based nutraceuticals and medical foods sold to healthcare practitioners worldwide. At Metagenics, Lyra takes a leadership role in the formulation and development of herbal formulas, while educating healthcare professionals worldwide on the benefits of combining natural systems of healing with conventional medical practice. A board member of the American Herbal Products Association (AHPA), Lyra also maintains a private consulting practice in Los Angeles, CA, and is the co-author of *Good for You! Smart Choices for Hormone Health!*

Christopher Katke

As a co-founder of Metagenics, Inc. with over 25 years of experience in the field of natural medicine, Chris has been involved in every aspect of the dietary supplement industry. Key areas of focus for Chris have been patient education and the translation of current nutritional science into clinical practice. Chris lectures extensively and has helped both practitioners and patients realize the powerful health-changing benefits of optimizing the nutrition-lifestyle-mind-body relationship. Currently, Chris works as a nutrition and lifestyle coach, implementing the *FirstLine Therapy* program in Southern California.

Mike Katke

Mike's international career as a nutritional consultant in the healthcare industry spans over 25 years. Mike developed *FirstLine Therapy* in conjunction with a wide variety of leading healthcare practitioners in clinical settings. Mike lectures frequently throughout the U.S. and worldwide on the clinical application of functional nutrition, and is regarded for his professionalism and astute understanding of the needs of today's healthcare practitioners and their patients. He currently serves as the Vice President of Medical Marketing at Metagenics, Inc., which he co-founded.

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EXHIBIT “C”

To: Metagenics, Inc. (dhc@dhcavanaugh.net)
Subject: TRADEMARK APPLICATION NO. 77349868 - FIRST LINE THERAPY - N/A
Sent: 3/6/2008 3:50:50 PM
Sent As: ECOM111@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/349868

MARK: FIRST LINE THERAPY

77349868

CORRESPONDENT ADDRESS:

DENNIS H. CAVANAUGH
D H CAVANAUGH ASSOCIATES
555 5TH AVE FL 17
NEW YORK, NY 10017-9254

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Metagenics, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET
NO:** N/A

CORRESPONDENT E-MAIL ADDRESS:
dhc@dhcavanaugh.net

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: 3/6/2008

OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 704.02.

AMENDMENT: In accordance with the authorization granted by the applicant's attorney, Dennis H. Cavanaugh, on March 6, 2008 the application has been AMENDED as indicated below. Please advise the undersigned immediately if there is an objection to the amendment. Otherwise, no response is necessary. TMEP §707.

If the identification of goods or services has been amended, please note that any future amendments must be in accordance with 37 C.F.R. 2.71(a); TMEP section 1402.07(e).

EXHIBIT C

State of Incorporation

Applicant corporation is incorporated under the laws of Delaware. 37 C.F.R. §2.32(a)(3)(ii); TMEP §§803.03(c) and 803.04.

/Esther A. Belenker/
Trademark Examining Attorney
Law Office 111
Tel: 571/272-9125
Fax: 571/273-9125

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

EXHIBIT “D”



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RIVERBEND COMMUNICATIONS

Word Mark RIVERBEND COMMUNICATIONS

Goods and Services IC 038. US 100 101 104. G & S: Radio broadcasting; telecommunication services, namely, broadcasting services via radio, Internet, and satellite systems. FIRST USE: 20060401. FIRST USE IN COMMERCE: 20060401

IC 041. US 100 101 107. G & S: Education and entertainment services, namely, radio programming services and production of radio programs in the field of news, sports, current events, music; educational services, namely, forums, workshops, seminars and programs in the field of personal finance, real estate, business, health and nutrition, religion, self-improvement and entertainment in the nature of online computer games and contests via radio, Internet, and satellite systems; providing information in the field of news, sports, current events, music, and education and entertainment via radio, Internet, and satellite systems. FIRST USE: 20060401. FIRST USE IN COMMERCE: 20060401

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78796345

Filing Date January 20, 2006

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition October 30, 2007

Registration Number 3596638

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Martin E. Hsia

32,471

Date: 3/10/11

EXHIBIT D

http://tess2.uspto.gov/bin/showfield?f=doc&state=4010:neistp.2.1

Registration Date March 24, 2009
Owner (REGISTRANT) Riverbend Communications, LLC CORPORATION IDAHO 2880 North 55 West Idaho Falls IDAHO 83405
Attorney of Record Tyrie Barrott
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ANYTHING IS POSSIBLE

Word Mark **ANYTHING IS POSSIBLE**
Goods and Services IC 009. US 021 023 026 036 038. G & S: Audio and video recordings featuring content in the fields of psychological self-help, self awareness, and the power of positive thinking. FIRST USE: 20100409. FIRST USE IN COMMERCE: 20100409

IC 016. US 002 005 022 023 029 037 038 050. G & S: Books in the fields of psychological self-help, self awareness, and the power of positive thinking; Printed instructional, educational, and teaching materials in the field of psychological self-help, self awareness, and the power of positive thinking; Posters. FIRST USE: 20100409. FIRST USE IN COMMERCE: 20100409

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85023499

Filing Date April 26, 2010

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition July 27, 2010

Registration 3861097

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Martin E. Hsia

32,471

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EXHIBIT E

Number

**Registration
Date**

October 12, 2010

Owner

(REGISTRANT) Gill, Mel INDIVIDUAL UNITED STATES 145 S. Sunnyside Ave. Elmhurst ILLINOIS 60126

**Attorney of
Record**

Thomas P. Philbrick

Type of Mark

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Singin' & Signin'

Word Mark
Goods and
Services

SINGIN' & SIGNIN'

IC 009. US 021 023 026 036 038. G & S: Computer software featuring musical sound recordings and musical video recordings; Educational kit comprising DVDs featuring secondary level curriculum on all scientific disciplines, along with teacher guides, sold as a unit; Educational software featuring instruction in mathematics. FIRST USE: 20070424. FIRST USE IN COMMERCE: 20080308

IC 016. US 002 005 022 023 029 037 038 050. G & S: Educational and learning publications, namely, booklets and flash cards on a variety of educational disciplines in pre-school through eighth grade; Educational kits sold as a unit in the field of mathematics consisting primarily of educational books, flash cards and worksheets, and also including an educational DVD; Printed educational materials in the field of mathematics; Printed instructional, educational, and teaching materials in the field of mathematics. FIRST USE: 20070424. FIRST USE IN COMMERCE: 20080308

IC 041. US 100 101 107. G & S: Education information; Education services, namely, providing kindergarten through 12th grade (K-12) classroom instruction; Education services, namely, providing math program in the field of mathematics; Education services, namely, providing math program in the fields of mathematics; Education services, namely, training educators to teach through service learning and civic engagement and providing curricula in connection therewith; Educational services, namely, developing curriculum for educators; Educational services, namely, developing curriculum for teachers; Educational services, namely, providing courses of instruction at the k-12 level and distribution of course material in connection therewith. FIRST USE: 20070424. FIRST USE IN COMMERCE: 20080308

Standard
Characters
Claimed

Mark Drawing
Code

(4) STANDARD CHARACTER MARK

Trademark
Search Facility

NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical

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32471

Martin E. Hsia

Date: 3/10/11

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| | |
|-----------------------------------|--|
| Classification Code | signs,zodiac signs,prescription marks |
| Serial Number | 85054380 |
| Filing Date | June 3, 2010 |
| Current Filing Basis | 1A |
| Original Filing Basis | 1A |
| Supplemental Register Date | September 15, 2010 |
| Registration Number | 3871764 |
| Registration Date | November 2, 2010 |
| Owner | (REGISTRANT) Singin' & Signin' LLC LIMITED LIABILITY COMPANY OKLAHOMA 1820 S. Cincinnati Ave. Tulsa OKLAHOMA 74119 |
| Type of Mark | TRADEMARK. SERVICE MARK |
| Register | SUPPLEMENTAL |
| Live/Dead Indicator | LIVE |

| | | | | | | | |
|---------------------------|--------------------------|----------------------------|---------------------------|-----------------------------|---------------------------|---------------------|----------------------|
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EXHIBIT “G”



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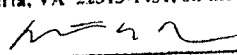
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CREATING IRRESISTIBLE CONNECTIONS

| | |
|------------------------------------|---|
| Word Mark | CREATING IRRESISTIBLE CONNECTIONS |
| Goods and Services | IC 009. US 021 023 026 036 038. G & S: Downloadable educational audio files, text files and video materials in the field of personal relationships and dating and romance. FIRST USE: 20100101. FIRST USE IN COMMERCE: 20100615 |
| | IC 016. US 002 005 022 023 029 037 038 050. G & S: Books, brochures, printed educational material providing information in the field of personal relationships and dating and romance. FIRST USE: 20100101. FIRST USE IN COMMERCE: 20100615 |
| | IC 045. US 100 101. G & S: Providing a website featuring information and content in the field of personal relationships and dating and romance. FIRST USE: 20100101. FIRST USE IN COMMERCE: 20100615 |
| Standard Characters Claimed | |
| Mark Drawing Code | (4) STANDARD CHARACTER MARK |
| Serial Number | 85033377 |
| Filing Date | May 7, 2010 |
| Current Filing Basis | 1A |
| Original Filing Basis | 1B |
| Published for Opposition | October 26, 2010 |
| Registration Number | 3903506 |

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Martin E. Hsia

32,471

Date: 3/10/11

EXHIBIT G

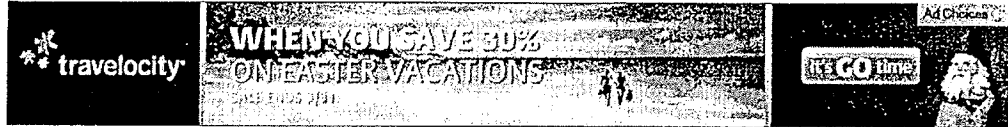
http://tess2.uspto.gov/bin/showfield?f=doc&state=4002:s4la2o.6.1

Registration Date January 11, 2011
Owner (REGISTRANT) Coaching Your Attraction in Action, LLC LIMITED LIABILITY COMPANY ARIZONA P.O.
Box 7947 Cave Creek ARIZONA 85327
Attorney of Record Carl J. Spagnuolo
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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EXHIBIT “H”



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first

first

112 ENTRIES FOUND:

- 1) first (adjective)
- 2) first (adverb)
- 3) first (noun)

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first *adj* \ˈfɜrst\

Definition of FIRST

: preceding all others in time, order, or importance: as

a : EARLIEST

b : being the lowest forward gear or speed of a motor vehicle

c : having the highest or most prominent part among a group of similar voices or instruments <first tenor> <first violins>

See first defined for English-language learners »

Examples of FIRST

We sat in the *first* row.

She succeeded on her *first* attempt.

I still remember the *first* time I saw her.

Origin of FIRST

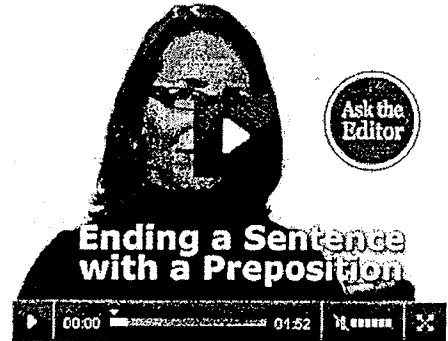
Middle English, from Old English *fyrist*; akin to Old High German *furist* first, Old English *ƿaran* to go — more at FARE

First Known Use: before 12th century

Related to FIRST

Synonyms: earliest, foremost, headmost, inaugural, initial, leadoff, maiden, original, pioneer, premier, virgin

Antonyms: final, last, latest, latter, terminal, terminating, ultimate



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After Charlie Sheen called a radio show to offer his opinions ... more »



"Anodyne"
In an article discussing controversial policy decisions ... more »

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Martin E. Hsia

32,471

Date:

3/11/11

EXHIBIT H

[+] more

Rhymes with FIRST

burst, cursed, erst, Hearst, thirst, verst, worst

Browse

Next Word in the Dictionary: first aid

Previous Word in the Dictionary: firm

All Words Near: first

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,467,675
Mark: "FIRST LINE THERAPY"
Date of Issue: July 15, 2008

| | | |
|--|---|----------------------------|
| EVERETT W. JAMES aka TAD JAMES, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| METAGENICS, INC., a Delaware Corporation, |) | Cancellation No. 92/053787 |
| |) | |
| Respondent. |) | Registration No. 3,467,675 |
| and |) | |
| |) | |
| METAGENICS, INC., a California corporation |) | |
| |) | |
| Additional Party Defendant. |) | |
| |) | |

PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the attached AMENDED PETITION FOR CANCELLATION; EXHIBITS "A" – "H" was mailed by prepaid U.S. First Class Mail on the date noted below, to:

Dennis H. Cavanaugh, Esq.
D H Cavanaugh Associates
555 5TH AVE FL 17
New York, NY 10017-9254

Attorney for Respondent
Metagenics, Inc.
a Delaware corporation

also via Email: dhc@dhcavanaugh.net

Metagenics, Inc.
a California corporation
100 Avenida La Pata
San Clemente, CA 92673

DATED: Honolulu, Hawaii this 21st day of September, 2011.



Martin E. Hsia, Reg. No. 32,471
CADES SCHUTTE LLP
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
(808) 544-3835

Attorneys for Petitioner
EVERETT W. JAMES aka TAD JAMES

ImanageDB:1520011.3

EXHIBIT “B”

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,467,675
Mark: "FIRST LINE THERAPY"
Date of Issue: July 15, 2008

| | | |
|---|---|-----------------------------------|
| EVERETT W. JAMES aka TAD JAMES, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| METAGENICS, INC., a Delaware Corporation, |) | Cancellation No. <u>92/053787</u> |
| |) | |
| <u>Registrant Respondent.</u> |) | <u>Registration No. 3,467,675</u> |
| and |) | |
| |) | |
| <u>METAGENICS, INC., a California corporation</u> |) | |
| |) | |
| <u>Additional Party Defendant.</u> |) | |
| |) | |

AMENDED PETITION FOR CANCELLATION

EVERETT W. JAMES, a United States citizen ("**Petitioner**"), having a business address at 1453 Foothills Village Drive, Henderson, Nevada 89012, believes he has been and will be damaged by U.S. Registration 3,467,675 (the "**Registration**") for "FIRST LINE THERAPY" (the "**Registrant's Mark**"), which issued on July 15, 2008, to METAGENICS, INC., a Delaware corporation ("**Registrant**"), whose mailing address is 100 Avenida La Pata, San Clemente, California 92673, ~~on July 15, 2008~~, and hereby petitions to cancel the same.

As grounds therefor, Petitioner alleges as follows:

EXHIBIT B

1. Petitioner is the holder of the following U.S. Trademark Registrations for his mark “TIME LINE THERAPY” (“**Petitioner's Mark**”), which registrations have become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065:

(a) Registration No. 1,818,198 for “educational services; namely, conducting classes and seminars in the field of self-improvement” in International Class 41, issued on January 25, 1994; and

(b) Registration No. 1,890,438 for “prerecorded video tapes featuring lectures in the field of self-improvement and prerecorded audio tapes featuring lectures in the field of self-improvement” in International Class 9, issued on April 18, 1995.

2. Petitioner also owns various U.S. trademark registrations, and has filed applications for Petitioner's Mark, including (without limitation) the following:

(a) U.S. Registration No. 3,596,997 for “Audio recordings featuring lectures in the field of self-improvement and video recordings featuring lectures in the field of self-improvement,” in International Class 9, issued on March 31, 2009;

(b) U.S. Trademark Application Serial No. 77/851,026 for “Educational services, namely providing on-line non-downloadable audio lectures in the field of self-improvement; and educational services, namely providing on-line non-downloadable video lectures in the field of self-improvement” in International Class 41, filed on October 16, 2009; and

(c) U.S. Trademark ~~Application Serial No. 77/851,033~~ Registration No. 3,975,310 for “TIME LINE THERAPY” covering “Audio recordings featuring lectures in the field of self-improvement; downloadable audio recordings featuring lectures in the field of self-improvement; video recordings in the field of self-improvement; downloadable video recordings

in the field of self-improvement; and media players” in International Class 9, filed on October 16, 2009 issued on June 7, 2011.

3. The goods and services covered by Petitioner’s registrations for “TIME LINE THERAPY” are collectively referred to herein as the “**Petitioner’s Goods and Services.**”

4. Petitioner’s registrations are valid and subsisting and remain in full force and effect, as evidence of the validity, and of Petitioner’s exclusive ownership of, and the right to use, “TIME LINE THERAPY,” or any mark confusingly similar thereto, or which causes the dilution thereof, for Petitioner’s Goods and Services and all goods and/or services related thereto.

5. Petitioner’s registrations do not contain any restrictions as to trade channels or purchasers.

6. For many years, Petitioner has continuously advertised, sold and distributed Petitioner’s Goods and Services in commerce under his mark “TIME LINE THERAPY” throughout the United States and the World. Petitioner has developed an exceedingly valuable goodwill with respect to his mark “TIME LINE THERAPY.”

7. Since at least as early as September 1987, Petitioner has had extensive, exclusive, and continuous use in commerce of Petitioner’s Mark in connection with educational services; namely, conducting classes and seminars in the field of self-improvement.

8. Since at least as early as July 1989, Petitioner has had extensive, exclusive, and continuous use in commerce of Petitioner’s Mark in connection with prerecorded video tapes featuring lectures in the field of self-improvement and prerecorded audio tapes featuring lectures in the field of self-improvement.

9. Petitioner has also acquired common law rights to the mark, “TIME LINE THERAPY”, in connection with classes and seminars in the field of self-improvement.

10. By virtue of his efforts, the expenditure of considerable sums for advertising and promotional activities, and by virtue of the excellence of Petitioner’s Goods and Services, Petitioner has gained for his mark “TIME LINE THERAPY” a most valuable reputation.

11. Petitioner’s Mark, “TIME LINE THERAPY,” is famous under 15 U.S.C. § 1125(c)(1).

12. Petitioner’s Mark, “TIME LINE THERAPY,” is famous as to educational services; namely, conducting classes and seminars in the field of self-improvement, and as to prerecorded video tapes featuring lectures in the field of self-improvement and prerecorded audio tapes featuring lectures in the field of self-improvement under 15 U.S.C. § 1125(c)(1).

13. On information and belief, on or about April 25, 1983, Metagenics, Inc. was incorporated as a California corporation (“Old Cal. Corp.”).

14. On information and belief, on May 11, 2006, Old Cal. Corp. merged with and into a Delaware corporation having the same name (Metagenics, Inc.) and address pursuant to or as evidenced by a Certificate of Ownership And Merger Re Merger of Metagenics, Inc., A California Corporation, Into Metagenics, Inc., A Delaware Corporation (“Metagenics Delaware”), a true and correct copy of which is attached hereto as Exhibit “A.”

15. On information and belief, Metagenics Delaware became the owner of Registrant’s Mark, “FIRST LINE THERAPY,” as of the May 11, 2006, effective date of the merger.

16. On or about May 17, 2006, on information and belief, another corporation having the same name (Metagenics, Inc.) and address as Metagenics Delaware was incorporated as a California corporation (“**New Cal. Corp.**”).

17. On December 12, 2007, on information and belief, Registrant New Cal. Corp. (not Registrant Metagenics Delaware), filed with the U.S. Patent and Trademark Office (the “**Office**”) trademark application serial no. 77/349868 for registration of Registrant’s Mark, “FIRST LINE THERAPY” (the “**Application**”). A true and correct copy of the Application, as filed by New Cal. Corp., is attached hereto as Exhibit “B.”

18. As of the date that the Application was filed, December 12, 2007, New Cal. Corp. was in existence and was the original applicant of the Application, even though Metagenics Delaware – not applicant New. Cal. Corp. – owned Registrant’s Mark pursuant to the merger.

19. On or about March 6, 2008, on information and belief, Metagenics Delaware or its representative requested that the Trademark Examining Attorney amend the Application to change the Applicant’s state of incorporation, as shown in the Application, from California to Delaware. A true and correct copy of the Examiner’s Amendment sent on March 6, 2008, is attached hereto as Exhibit “C.”

20. The change of applicant from New Cal. Corp. to Metagenics Delaware was not a correctable defect. TMEP §§ 1201.02(b) and (c).

21. ~~14.~~ On or about July 15, 2008, U.S. Registration No. 3,467,675 was issued from the Application to Registrant Metagenics Delaware (the “**Registration**”).

22. The Registration is void because New Cal. Corp. was not the owner of Registrant’s Mark at the time the Application was filed by New Cal. Corp. 15 U.S.C. § 1051(a).

23. ~~15.~~ The Registration covers “Printed educational materials and printed practice management materials for healthcare practitioners, namely, printed books for patient education on the subject of health and nutrition, printed books for practice management on the subjects of health and nutrition, printed books for professional education on the subjects of health and nutrition, posters and brochures for patient education and professional education on the subjects of health and nutrition,” in International Class 16 and “Educational and practice management seminars for healthcare practitioners in the fields of health and nutrition,” in International Class 41 (collectively, “**Registrant’s Goods and Services**”).

24. ~~16.~~ The Registration is not restricted as to channels of trade or purchasers.

25. ~~17.~~ Registrant’s Goods and Services are related to Petitioner’s Goods and Services.

26. ~~18.~~ Registrant’s “Educational and practice management seminars for healthcare practitioners in the fields of health and nutrition,” in International class 41 are related to Petitioner’s “Educational services; namely, conducting classes and seminars in the field of self-improvement,” in International class 41.

27. ~~19.~~ Consumers are likely to be confused as to whether the source of Registrant’s Goods and Services and the source of Petitioner’s Goods and Services are the same, or are related or otherwise affiliated to one another.

28. ~~20.~~ The circumstances surrounding and otherwise pertaining to the marketing of Registrant’s Goods and Services and Petitioner’s Goods and Services are such that said goods and/or services are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source.

29. ~~21.~~ Educational services in the field of health and nutrition and educational services in the field of self-improvement are often marketed and sold under the same mark, as shown by U.S. Trademark Registration No. 3,596,638 for “RIVERBEND COMMUNICATIONS” for “*Education and entertainment services, namely, radio programming services and production of radio programs in the field of news, sports, current events, music; educational services, namely, forums, workshops, seminars and programs in the field of personal finance, real estate, business, health and nutrition, religion, self-improvement and entertainment in the nature of online computer games and contests via radio, Internet, and satellite systems; providing information in the field of news, sports, current events, music, and education and entertainment via radio, Internet, and satellite systems,*” in International Class 41, a true and correct copy of which is attached hereto as Exhibit “AD” (emphasis added).

30. ~~22.~~ Registrant’s books and brochures and Petitioner's audio-recordings and video recordings are often marketed and sold under the same mark, as shown by:

(a) U.S. Trademark Registration No. 3,861,097 for “ANYTHING IS POSSIBLE” for “*Audio and video recordings featuring content in the fields of psychological self-help, self awareness, and the power of positive thinking,*” in International Class 9 and “*Books in the fields of psychological self-help, self awareness, and the power of positive thinking; Printed instructional, educational, and teaching materials in the field of psychological self-help, self awareness, and the power of positive thinking; Posters,*” in International class 16, a true and correct copy of which is attached hereto as Exhibit “BE” (emphasis added);

(b) U.S. Trademark Registration No. 3,871,764 for “SINGIN' & SINGIN” for “Computer software featuring musical sound recordings and *musical video recordings*; Educational kit comprising DVDs featuring secondary level curriculum on all scientific

disciplines, along with teacher guides, sold as a unit; Educational software featuring instruction in mathematics,” in International Class 9 and “Educational and learning publications, namely, booklets and flash cards on a variety of educational disciplines in pre-school through eighth grade; Educational kits sold as a unit in the field of mathematics consisting primarily of educational *books*, flash cards and worksheets, and also including an educational DVD; Printed educational materials in the field of mathematics; Printed instructional, educational, and teaching materials in the field of mathematics,” in International class 16, a true and correct copy of which is attached hereto as Exhibit “CF” (emphasis added); and

(c) U.S. Trademark Registration No. 3,903,506 for “CREATING IRRESISTIBLE CONNECTIONS” for “Downloadable educational *audio* files, text files and *video* materials in the field of personal relationships and dating and romance” in International Class 9 and “*Books, brochures*, printed educational material providing information in the field of personal relationships and dating and romance,” in International class 16, a true and correct copy of which is attached hereto as Exhibit “CG” (emphasis added).

31. ~~23.~~ Two of the three words in Registrant’s Mark and Petitioner’s Mark are identical, namely, “LINE” and “THERAPY.”

32. ~~24.~~ “First” is a concept that is related to “Time. ” See Exhibit “EH” (stating that “First” means “preceding all others in *time*, order or importance. ”) (emphasis added).

33. ~~25.~~ Registrant’s Mark “FIRST LINE THERAPY” is confusingly similar to Petitioner’s Mark “TIME LINE THERAPY.”

34. ~~26.~~ Registrant also holds U.S. Registration 2,818,514 for Registrant’s Mark covering Registrant’s Goods and Services, which issued on the Supplemental Register on February 24, 2004 (the “**Supplemental Registration**”).

35. ~~27.~~ On August 6, 2003, Registrant's trademark application serial no. 76/433454 (from which the Supplemental Registration issued) was finally refused registration on the Principal Register because Registrant's Mark merely describes Registrant's Goods and Services, specifically, "applicant's entire mark FIRST LINE THERAPY is descriptive. "

36. ~~28.~~ On October 28, 2003, in response to the August 6, 2003 final refusal for descriptiveness, Registrant Metagenics Delaware's predecessor amended trademark application serial no. 76/433454 to seek registration on the Supplemental Register, thereby resulting in the Supplemental Registration.

37. ~~29.~~ Registrant's Mark, "FIRST LINE THERAPY," is merely descriptive as applied to Registrant's Goods and Services. 15 U.S.C. § 1052(e)(1).

38. ~~30.~~ Registrant's Mark has not acquired secondary meaning for Registrant's Goods and Services and therefore is not entitled to be registered on the Principal Register.

39. ~~31.~~ If Registrant is permitted to retain U.S. Registration No. 3,467,675, and thereby the *prima facie* exclusive right to use in commerce Registrant's Mark in connection with services identical or related to Petitioner's Goods and Services, confusion in trade is likely to result from any concurrent use of Petitioner's Mark and Registrant's Mark to the detriment of Petitioner, who has expended considerable sums and effort in promoting his mark "TIME LINE THERAPY". Any objection, or fault found with the Registrant's Goods and Services marketed under Registrant's Mark would reflect on, and injure, the reputation Petitioner has established for goods and services sold in connection with its mark "FIRST LINE THERAPY."

40. ~~32.~~ The continued use and registration of Registrant's Mark would result in confusion, mistake, and/or deception as to the source or origin of the Registrant's Goods and Services, leading consumers to believe that they are somehow affiliated with, approved,

sponsored, or licensed by Petitioner, or otherwise emanate from Petitioner, resulting in the loss of sales to Petitioner. 15 U.S.C. § 1052(d).

41. ~~33.~~ The continued use and registration of Registrant's Mark, concurrently with "TIME LINE THERAPY," will become a source of irreparable damage and injury to Petitioner's reputation and goodwill through the generation of confusion, mistake, and/or deception, the dilution of Petitioner's registered marks, and the diminution of Petitioner's ability to control the quality of the goods and services provided thereunder because consumers are likely to attribute the source of Registrant's Goods and Services to Petitioner.

42. ~~34.~~ The continued use and registration of Registrant's Mark is likely to dilute, and/or will dilute, the distinctiveness of Petitioner's Mark "TIME LINE THERAPY." 15 U.S.C. § 1125(c).

43. ~~35.~~ If Registrant is permitted to rely on and/or retain the Registration, a cloud will be placed on Petitioner's title in and to his mark "TIME LINE THERAPY," and on his right to enjoy the free and exclusive use thereof in connection with the sale of his goods and services, all to the damage and harm of Petitioner.

44. ~~36.~~ There is no issue as to priority of use. As evidenced by the registrations identified above, Petitioner has been using his mark "TIME LINE THERAPY" since as early as September 1987, and he filed his applications for his incontestable registrations in 1992.

Registrant indicates a date of first use of September 2002 for Registrant's Goods and Services.

The fee required by 37 C.F.R. § 2.6(a)(16) is enclosed herewith.

WHEREFORE, Petitioner respectfully requests the cancellation of U.S. Registration No. 3,467,675 for "FIRST LINE THERAPY" issued on July 15, 2008, pursuant to 15 U.S.C. § 1064.

DATED: Honolulu, Hawaii this _____ day of _____, 2011.

Martin E. Hsia, Reg. No. 32,471
CADES SCHUTTE LLP
A Limited Liability Law Partnership
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
Tel: (808) 521-9200
Attorney for Petitioner
EVERETT W. JAMES

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,467,675
Mark: "FIRST LINE THERAPY"
Date of Issue: July 15, 2008

EVERETT W. JAMES aka TAD JAMES,)
)
Petitioner,)

PROOF OF SERVICE

METAGENICS, INC., a Delaware Corporation,) Cancellation No. 92/053787

Registrant Respondent.) Registration No. 3,467,675

and)

METAGENICS, INC., a California corporation)

Additional Party Defendant.)

PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the attached AMENDED
PETITION FOR CANCELLATION; EXHIBITS "A" – "H" was mailed by prepaid U.S. First
Class Mail on the date noted below, to:

Dennis H. Cavanaugh, Esq.
D H Cavanaugh Associates
555 5TH AVE FL 17
New York, NY 10017-9254

also via Email: dhc@dhcavanaugh.net

Attorney for Respondent
Metagenics, Inc.
a Delaware corporation

Metagenics, Inc.
a California corporation
100 Avenida La Pata
San Clemente, CA 92673

DATED: Honolulu, Hawaii this _____ day of _____, 2011.

Martin E. Hsia, Reg. No. 32,471
CADES SCHUTTE LLP
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
(808) 544-3835

Attorneys for Petitioner
EVERETT W. JAMES aka TAD JAMES

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EXHIBIT “C”

| | |
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| Everett W. James aka Tad James, | : |
| | : |
| Petitioner, | : |
| | : |
| v. | : |
| | : |
| Metagenics, Inc., | : |
| | : |
| Registrant, | : |
| -----X | |

Cancellation No.: 92053787

Any responsive documents that may be produced will be so subject to the Standardized Protective Agreement automatically entered by agreement of the parties' counsel in this proceeding by the Trademark Trial and Appeal Board.

EXHIBIT C

GENERAL RESPONSES, OBJECTIONS AND LIMITATIONS

1. Registrant objects to each of the interrogatories and requests to the extent that the terms referred to therein are not defined.

2. Registrant objects to each of the interrogatories and requests to the extent that Petitioner seeks information or documents that is or are protected against disclosure in discovery because of the attorney-client privilege, the work product doctrine, or any other applicable privilege.

3. Registrant objects to each of the interrogatories and requests to the extent that the discovery sought is too voluminous, burdensome or unreasonably expensive for Registrant to locate, identify and/or retrieve.

4. Registrant objects to each of the interrogatories and requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the nature of the controversy, the parties' resources, the importance of the issues at stake in this proceeding, and the importance of the proposed discovery in resolving the issues.

5. Registrant objects to each of the interrogatories and requests to the extent that the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

6. Registrant objects to each of the interrogatories and requests to the extent that the discovery sought is not relevant to the subject matter involved in the pending action.

7. Registrant objects to each of the interrogatories and requests to the extent that the discovery sought does not appear reasonably calculated to lead to the discovery of admissible evidence in the pending action.

8. Registrant objects to each of the interrogatories and requests to the extent that Petitioner seeks information or documents solely for purposes of delay, harassment or oppression.

9. Registrant objects to each of the interrogatories and requests to the extent that Petitioner seeks information or documents concerning any activities or practices within the knowledge, possession or control of third parties and not in the possession or under the custody or control of Registrant.

10. Registrant objects to each of the interrogatories and requests to the extent that Petitioner seeks information from or identification of documents, writings, records or publications in the public domain, since such information is equally available to Petitioner.

11. Registrant objects to each of the interrogatories and requests to the extent that Petitioner seeks information from or identification of documents, writings, records or publications already within the knowledge, possession, custody or control of Petitioner.

12. Registrant objects to each of the interrogatories and requests to the extent that they call for information or documents containing information that are confidential or proprietary to Registrant.

13. Where an answer to an interrogatory or request may be derived or ascertained from Registrant's business records or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for Registrant as well as Petitioner, Registrant reserves its right under Rule 33(d), Fed.R.Civ.P., to identify the records from which the answer may be ascertained, and to afford Petitioner reasonably opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries thereof.

14. Registrant objects to the phrase “all documents” or “every” or other similar language as unduly burdensome to the extent that it requires Registrant to incur an unreasonable burden or expense.

15. Registrant objects to Petitioner’s definitions to the extent that they exceed the requirements of the Federal Rules of Civil Procedure or the Trademark Trial and Appeal Board Manual of Procedure.

16. Any disclosure of information protected by any privilege or immunity is inadvertent and does not constitute a waiver of any privilege or right of Registrant.

17. To the extent that Registrant indicates that “no documents exist,” such indication is only an indication that no documents or things have presently been located after a reasonable good faith search.

18. Registrant expressly reserves (i) all objections to the competency, relevance, materiality and admissibility of its responses, and (ii) the right to revise, correct, supplement or clarify these responses where necessary. Registrant furnishes the following responses subject to continuing investigation and discovery.

Subject to these general responses, objections and limitations, and without waiving them, Registrant responds as follows:

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

With respect to Registrant’s Mark:

A. identify all persons known to Registrant who took part in or were responsible for its (i) creation and (ii) earliest selection for use; and

B. set forth all facts known to Registrant and identify all documents relating or referring to its (i) creation and (ii) earliest selection for use.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Interrogatory on the grounds that it is overly broad and that any response thereto would be overly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Interrogatory and reserves its right to supplement this response if and when additional information or documents become available to it.

INTERROGATORY NO. 2:

Identify in detail each and every good and service with which Registrant has used Registrant's Mark, and as to each such good or service, state in detail the manner of such use (actual sales, advertisements, etc.), and the annual sales revenues in United States dollars for each calendar year since January 1, 2002, to the present.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Interrogatory on the grounds that it is overly broad and that any response thereto would be overly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to

this Interrogatory and reserves its right to supplement this response if and when additional information or documents become available to it.

INTERROGATORY NO. 3:

Identify in detail each and every good and service with which Registrant is currently using Registrant's Mark, and as to each such good or service state in detail the manner of such use (actual sales, advertisements, etc.), and the annual sales revenues in United States dollars for each calendar year since January 1, 2002, to the present.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Interrogatory on the grounds that it is overly broad and that any response thereto would be overly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Interrogatory and reserves its right to supplement this response if and when additional information or documents become available to it.

INTERROGATORY NO. 4:

For each and every good and service with which Registrant has used or is currently using Registrant's Mark, state the date of first use of the mark with the good or service, and state the date of first use of the mark with the good or service in interstate commerce.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to

lead to the discovery of admissible evidence. Registrant further objects to this Interrogatory on the grounds that it is overly broad and that any response thereto would be overly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Interrogatory and reserves its right to supplement this response if and when additional information or documents become available to it.

INTERROGATORY NO. 5:

Identify all entities, goods, services, and events that Registrant sponsors or endorses, or intends to sponsor or endorse, under or in connection with Registrant's Mark.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Interrogatory on the grounds that it is overly broad and that any response thereto would be overly burdensome. Registrant further objects to this Interrogatory on the grounds that information responsive thereto may be protected by the attorney-client and/or work-product privileges. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Interrogatory and reserves its right to supplement this response if and when additional information or documents become available to it.

INTERROGATORY NO. 6:

Identify all entities that endorse or sponsor, or intend to endorse or sponsor, anything under or in connection with Registrant's Mark.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Interrogatory on the grounds that it is overly broad and that any response thereto would be overly burdensome. Registrant further objects to this Interrogatory on the grounds that information responsive thereto may be protected by the attorney-client and/or work-product privileges. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Interrogatory and reserves its right to supplement this response if and when additional information or documents become available to it.

INTERROGATORY NO. 7:

Identify every survey, pretest, poll or other investigation conducted by, for, or on Registrant's behalf relating to the public's recognition of or reaction to Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY" or the likelihood of confusion or mistake or deception resulting from the use of Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY," and for each survey or other investigation:

- A. state the results of the survey or investigation;
- B. identify all persons or entities conducting, preparing, supervising or involved in execution of the survey or investigation;
- C. state the date of each survey or investigation;
- D. state the geographical market or other area, or universe, surveyed or investigated;

- E. identify the classes of persons and state the number of persons in each class surveyed or investigated;
- F. state the methods used to make the survey or investigation; and
- G. identify and produce each document referring or relating to each such survey or investigation, including all drafts of all reports, questionnaires and all of the backup material used in connection therewith.

ANSWER:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that it is overly broad and that any response thereto would be overly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Interrogatory and reserves its right to supplement this response if and when additional information or documents become available to it. Further subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently unaware of any persons who were responsible for, participated in, or otherwise have information relevant to this Interrogatory or of any such survey, pretest, poll or other investigation, or the existence of any responsive documents.

INTERROGATORY NO. 8:

If Registrant or Registrant's attorney or agent has ever made or caused to be made any search relating to the registration, application for registration, or use of Registrant's Mark, or any other mark containing the term "FIRST LINE THERAPY" or related marks, by persons other than Registrant, state the following:

- A. identify each trademark, or service mark, or trade name found in each search;
- B. identify each document including, but not limited to, each search report, referring or relating to any such search;
- C. describe the actions, if any, taken by Registrant as a result of any matter revealed in the report or any such search; and
- D. the substance of the opinion given, if any, in connection with the report as to Registrant's proposed or actual use of each of Registrant's Mark.

ANSWER:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that it is overly broad and that any response thereto would be overly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Interrogatory and reserves its right to supplement this response if and when additional information or documents become available to it.

INTERROGATORY NO. 9:

State the date(s) on which Registrant first became aware of Petitioner's use of, or applications or registrations for, Petitioner's Mark.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant first became aware of Petitioner's Mark when Registrant received a letter from Petitioner's counsel of record herein dated December 19, 2002.

INTERROGATORY NO. 10:

Identify every person or entity who has ever inquired, orally or in writing, whether goods or services sold by Registrant or on Registrant's behalf under Registrant's Mark, or any other mark containing the term "FIRST LINE THERAPY," were sponsored, endorsed by, or were/are in any way connected or affiliated with Petitioner, and if so, then for each such inquiry:

- A. state the date on which the inquiry or reference was made;
- B. state the substance of the inquiry or reference;
- C. identify all persons having knowledge of the inquiry or reference; and
- D. identify all documents referring or relating to the inquiry or reference and any response thereto.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently unaware of any persons who were responsible for, participated in, or otherwise have information relevant to this Interrogatory or of any such studies, search reports, surveys and market research tests.

INTERROGATORY NO. 11:

If Registrant has ever received any misdirected mail, electronic mail, telephone calls, orders, inquiries or complaints, which were or may have been intended for Petitioner, as a result of Registrant's use of Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY":

- A. identify the communication or incident;
- B. identify all persons having knowledge of the communication or incident; and
- C. identify and produce all documents referring or relating to such communication or incident.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-

product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently unaware of any instances of actual or possible confusion, mistake, deception or association of any kind with Petitioner or any third party caused by Registrant's use or plans to use Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY" by Registrant or any other person.

INTERROGATORY NO. 12:

Describe in detail Registrant's standard for clearance of proposed trademarks and/or service marks, and state whether this procedure was used in clearance of Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY."

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

INTERROGATORY NO. 13:

Identify each owner or each person having or having had any right to use Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY" and through or under which Registrant claims any rights in Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY."

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

INTERROGATORY NO. 14:

Identify each owner or each person having or having had any right to use the mark, "FIRST LINE THERAPY," and through or under which Registrant claims any rights in the mark, "FIRST LINE THERAPY."

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

INTERROGATORY NO. 15:

Identify the channels of trade through which Registrant has sold, sells, and/or intends to sell its goods or services in connection with Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY."

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 16:

For each and every good or service with which Registrant has used, is using or intends to use Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY," describe the class(es) of purchasers (e.g. retail consumers, industrial processors, etc.) to whom each good or service is or will be sold.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 17:

Describe with particularity every variation of Registrant's Mark which Registrant has used or intends to use, such as with or without a design, with other words, designs, etc., or with words or portions omitted, or as abbreviated or truncated.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 18:

Identify all of Registrant's former and current licensees, distributors, dealers or representatives who sell or who will sell Registrant's goods or services under Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY," or who offer or provide goods or services under Registrant's Mark or any other mark containing the term "FIRST LINE

THERAPY,” either on their own behalf or on Registrant’s behalf, in the United States, under a license or some other agreement, and for each person, state their relationship to Registrant.

ANSWER:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that it is overly broad and that any response thereto would be overly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

INTERROGATORY NO. 19:

Identify every person Registrant has contacted for the purpose of being an expert witness in these proceedings and state whether or not Registrant has retained their services. For each person whose services have been retained, state the subject matter upon which the person was consulted to testify or advise; the facts and opinions given by the person; and a summary of the grounds for each such opinion.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Interrogatory on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and

without waiving the foregoing objections or its general objections, Registrant has currently not identified any expert witnesses, but reserves the right to call such witnesses.

INTERROGATORY NO. 20:

Identify all other pending trademark or service mark applications for marks containing “FIRST LINE THERAPY,” filed by or on behalf of Registrant anywhere in the United States or the World.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that it is overly broad and that any response thereto would be overly burdensome. Registrant further objects to this Interrogatory on the grounds that information responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that relevant information and documents regarding the United States may be obtained from the public files of the United States Patent and Trademark Office by performing an ownership search of Metagenics, Inc.

INTERROGATORY NO. 21:

Identify the person most knowledgeable at Registrant regarding Registrant’s adoption, creation, and use of Registrant’s Mark or any other mark containing the term “FIRST LINE THERAPY.”

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 22:

Identify every person whom Registrant expects to call as a witness during its testimony period (including without limitation any expert witnesses) and provide a short statement of the subject matter to which each person is expected to testify.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Interrogatory on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it has not yet determined whom it may call as a witness. Furthermore, pursuant to TBMP § 414(7), a party need not, in advance of trial, specify the evidence it intends to present, or identify the witnesses it intends to call, except for expert witnesses. Registrant has currently not identified any expert witnesses, but reserves the right to call such witnesses.

INTERROGATORY NO. 23:

For all persons participating in the answers to these interrogatories, please state:

A. Such person's identity, business address and personal address;

- B. The specific interrogatory answer(s), which such person participated in answering;
- C. The job title and relationship of each such person to Registrant.

ANSWER:

Registrant objects to this Interrogatory on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that the undersigned counsel provided information or documents from which these answers were derived.

REQUESTS FOR DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Any and all correspondence and communications between Registrant and the U.S. Patent and Trademark Office (the “Office”) with regard to applications to register Registrant’s Mark, and any application to register any other mark containing or incorporating the term “FIRST LINE THERAPY,” and any registrations(s) issuing therefrom (hereinafter, collectively, “Registrant’s Registrations”).

RESPONSE TO REQUEST NO. 1:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product

privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that relevant information and documents may be obtained from the public files of the United States Patent and Trademark Office by performing an ownership search of Metagenics, Inc.

REQUEST FOR PRODUCTION NO. 2:

All documents filed with the Trademark Trial and Appeal Board (“TTAB”) relating to any of Registrant’s Registrations, other than the proceeding involving Petitioner.

RESPONSE TO REQUEST NO. 2:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. Under Board precedent, the only information which must be provided with respect to any litigation is the name of the parties thereto, the jurisdiction, the proceeding number, the outcome of the proceeding and the citation of any decision. *See* TBMP § 414(10). All TTAB proceedings may be located by going to the TTABVUE link at the USPTO website and searching Metagenics, Inc. as a party.

REQUEST FOR PRODUCTION NO. 2:

Representative samples of all labels, packaging, invoices and other items (including but not limited to the goods and services of Registrant’s Registrations) bearing Registrant’s Mark and any other mark containing the term “FIRST LINE THERAPY.”

RESPONSE TO REQUEST NO. 3:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that relevant information and documents regarding may be obtained from the public files of the United States Patent and Trademark Office by performing an ownership search of Metagenics, Inc. and from Registrant's website www.metagenics.com.

REQUEST FOR PRODUCTION NO. 4:

Specimens of each and every good or service with which Registrant has used and/or intends to use Registrant's Mark and any other mark containing the term "FIRST LINE THERAPY."

RESPONSE TO REQUEST NO. 4:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that relevant information and documents regarding may be obtained from the public files of the United States Patent and Trademark Office by performing an ownership search of Metagenics, Inc. and from Registrant's website www.metagenics.com.

REQUEST FOR PRODUCTION NO. 5:

Any and all documents that evidence, refer, or relate to the date(s) of first use of Registrant's Mark and of any other mark containing the term "FIRST LINE THERAPY," in connection with each of Registrant's goods or services (including without limitation, each good or service listed in Registrant's Registrations).

RESPONSE TO REQUEST NO. 5:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that relevant information and documents regarding may be obtained from the public files of the United States Patent and Trademark Office by performing an ownership search of Metagenics, Inc. and from Registrant's website www.metagenics.com.

REQUEST FOR PRODUCTION NO. 6:

Any and all documents that evidence, refer, or relate to the date(s) of first use in commerce of Registrant's Mark and of any other mark containing the term "FIRST LINE THERAPY," in connection with each of Registrant's goods or services (including without limitation, each good or service listed in Registrant's Registrations).

RESPONSE TO REQUEST NO. 6:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. However, subject to and without waiving the foregoing

objections or its general objections, Registrant states that relevant information and documents regarding may be obtained from the public files of the United States Patent and Trademark Office by performing an ownership search of Metagenics, Inc. and from Registrant's website www.metagenics.com. Further subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Request and reserves its right to supplement this response if and when additional information or documents become available to it.

REQUEST FOR PRODUCTION NO. 7:

Any and all documents that evidence, refer, or relate to the date(s) of first sale, and date(s) of first sale in commerce, of each of Registrant's goods or services in connection with Registrant's Mark and any other mark containing the term "FIRST LINE THERAPY" (including without limitation, each good or service listed in Registrant's Registrations).

RESPONSE TO REQUEST NO. 7:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that relevant information and documents regarding may be obtained from the public files of the United States Patent and Trademark Office by performing an ownership search of Metagenics, Inc. and from Registrant's website www.metagenics.com. Further subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that

may be responsive to this Request and reserves its right to supplement this response if and when additional information or documents become available to it.

REQUEST FOR PRODUCTION NO. 8:

Any and all documents that evidence, refer, or relate to the channels of trade through which Registrant has sold and/or intends to sell its goods or services using Registrant's Mark and any other mark containing the term "FIRST LINE THERAPY."

RESPONSE TO REQUEST NO. 8:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome.

REQUEST FOR PRODUCTION NO. 9:

All documents that evidence, refer, or relate to the corporate existence or status of Metagenics, Inc., a California corporation.

RESPONSE TO REQUEST NO. 9:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

REQUEST FOR PRODUCTION NO. 10:

Any and all documents that evidence, refer, or relate to the class(es) of purchasers to whom each of Registrant's goods or services are and/or will be sold.

RESPONSE TO REQUEST NO. 10:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome.

REQUEST FOR PRODUCTION NO. 11:

Any and all documents that evidence, refer, or relate to the advertising, marketing and promotional channels in the U.S. through which Registrant has advertised, marketed and promoted, and/or intends to advertise, market and promote Registrant's goods or services using Registrant's Mark and any other mark containing the term "FIRST LINE THERAPY."

RESPONSE TO REQUEST NO. 11:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome.

REQUEST FOR PRODUCTION NO. 12:

Representative samples of all advertising, marketing, and promotional materials disseminated and/or to be disseminated by Registrant using Registrant's Mark and any other mark containing the term "FIRST LINE THERAPY" in connection with its goods or services, including but not limited to, magazine advertisements, newspaper advertisements, circulars,

catalogues, telephone book listings, press releases, leaflets, sales sheets, price lists, signs, and printed material relating to radio advertisements and television advertisements.

RESPONSE TO REQUEST NO. 12:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome.

REQUEST FOR PRODUCTION NO. 13:

Any and all documents indicating the annual dollar sales (in United States dollars) for each of Registrant's goods or services sold by Registrant in connection with Registrant's Mark and any other mark containing the term "FIRST LINE THERAPY" for every calendar year since January 1, 2002 to the present.

RESPONSE TO REQUEST NO. 13:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome.

REQUEST FOR PRODUCTION NO. 14:

Any and all documents indicating the annual dollar expenditures (in United States dollars) for U.S. advertising, marketing and promotion of each of Registrant's goods or services in connection with Registrant's Mark and any other mark containing the term "FIRST LINE THERAPY" for every calendar year since January 1, 2002 to the present.

RESPONSE TO REQUEST NO. 14:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome.

REQUEST FOR PRODUCTION NO. 15:

Any and all documents that evidence, refer, or relate to any inquiry or other communication relating to Registrant's goods or services, whether orally or in writing, which indicated in any way that the communication was intended for or related to Petitioner.

RESPONSE TO REQUEST NO. 15:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is presently unaware of the existence of any documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 16:

Any and all documents that evidence, refer, or relate to any instance of confusion in the United States, involving the source or origin of Petitioner's and Registrant's goods or services.

RESPONSE TO REQUEST NO. 16:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to

lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is presently unaware of the existence of any documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 17:

Any and all documents that evidence, refer, or relate to any occasion where any person inquired of Registrant whether there was a connection, affiliation or association between Petitioner and Registrant in the United States.

RESPONSE TO REQUEST NO. 17:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is presently unaware of the existence of any documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 18:

All documents that refer to Petitioner or Petitioner's Mark.

RESPONSE TO REQUEST NO. 18:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

REQUEST FOR PRODUCTION NO. 19:

All documents that specify or describe the corporate relationship between Registrant and Metagenics, Inc., a California corporation.

RESPONSE TO REQUEST NO. 19:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

REQUEST FOR PRODUCTION NO. 20:

All documents that describe, discuss, or refer to the selection, adoption, creation, or development of Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY."

RESPONSE TO REQUEST NO. 20:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to

lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

REQUEST FOR PRODUCTION NO. 21:

All documents that describe, discuss or refer to any marks considered by Registrant as alternatives to Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY."

RESPONSE TO REQUEST NO. 21:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

REQUEST FOR PRODUCTION NO. 22:

All documents that evidence, describe, discuss or refer to any measures taken by Registrant to determine the availability, strength or enforceability of Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY."

RESPONSE TO REQUEST NO. 22:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response

would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

REQUEST FOR PRODUCTION NO. 23:

Documents sufficient to identify all products/services upon which or in connection with which Registrant uses or intends to use Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY".

RESPONSE TO REQUEST NO. 23:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that relevant information and documents regarding may be obtained from the public files of the United States Patent and Trademark Office by performing an ownership search of Metagenics, Inc. and from Registrant's website www.metagenics.com.

REQUEST FOR PRODUCTION NO. 24:

All documents that support Registrant's claimed date of first use of Registrant's Mark in interstate commerce.

RESPONSE TO REQUEST NO. 24:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that relevant information and documents regarding may be obtained from the public files of the United States Patent and Trademark Office by performing an ownership search of Metagenics, Inc. Further subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Request and reserves its right to supplement this response if and when additional information or documents become available to it.

REQUEST FOR PRODUCTION NO. 25:

Any and all documents that relate to the issue of whether or not Registrant's Mark has been in continuous use from the claimed date of first use of Registrant's Mark in interstate commerce until the present.

RESPONSE TO REQUEST NO. 25:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that relevant information and documents regarding may be obtained from the public files of the United States Patent and Trademark Office by performing an ownership search of Metagenics, Inc. and from Registrant's website

www.metagenics.com. Further subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Request and reserves its right to supplement this response if and when additional information or documents become available to it.

REQUEST FOR PRODUCTION NO. 26:

All documents that describe, discuss or refer to any license, assignment, co-existence agreement or consent agreement with regard to Registrant's Mark or any other mark containing the term "FIRST LINE THERAPY."

RESPONSE TO REQUEST NO. 26:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. However, subject to and without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Request and reserves its right to supplement this response if and when additional information or documents become available to it.

REQUEST FOR PRODUCTION NO. 27:

Any and all documents identified, referred to, or relied upon by Registrant in preparing its responses to PETITIONER'S FIRST REQUEST FOR ANSWERS TO INTERROGATORIES TO REGISTRANT.

RESPONSE TO REQUEST NO. 27:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to

lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

REQUEST FOR PRODUCTION NO. 28:

Any and all documents that evidence, refer, or relate to Registrant's policy concerning document retention and destruction.

RESPONSE TO REQUEST NO. 28:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information.

REQUEST FOR PRODUCTION NO. 29:

Any and all documents that Registrant will use as evidence during the testimony period.

RESPONSE TO REQUEST NO. 29:

Registrant objects to this Request on the grounds that it calls for information or documents not relevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence, and that its is overly broad in that any response would be unduly burdensome. Registrant further objects to this Request on the grounds that documents responsive thereto may be protected by the attorney-client and/or work-product privileges or may otherwise contain proprietary business information. However, subject to and

without waiving the foregoing objections or its general objections, Registrant states that it is currently investigating facts and documents that may be responsive to this Request and reserves its right to supplement this response if and when additional information or documents become available to it.

Respectfully submitted,

METAGENICS, INC.

Dated: September 15, 2011

/Dennis H. Cavanaugh/
By _____
Dennis H. Cavanaugh
D H CAVANAUGH ASSOCIATES
Attorneys for Registrant
555 Fifth Avenue, 17th Floor
New York, New York 10017
Tel: (212) 856-1710
Fax: (212) 856-7211
Email: dhc@dhcavanaugh.net

CERTIFICATE OF SERVICE

DENNIS H. CAVANAUGH, declares that:

I am counsel for the Registrant in the captioned action, and that on the execution date which appears below, a true copy of the foregoing was served on Petitioner's counsel by causing the same to be sent via email to the following email addresses:

mhsia@cades.com
cmiwa@cades.com

2. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that all of the foregoing is true and correct.

Dated: New York, New York
September 15, 2011

/Dennis H. Cavanaugh/
By _____
Dennis H. Cavanaugh

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,467,675
Mark: "FIRST LINE THERAPY"
Date of Issue: July 15, 2008

| | | |
|---|---|----------------------------|
| EVERETT W. JAMES aka TAD JAMES, |) | |
| |) | |
| Petitioner, |) | |
| |) | Cancellation No. 92/053787 |
| v. |) | |
| |) | Registration No. 3,467,675 |
| METAGENICS, INC., a Delaware corporation, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the attached
PETITIONER'S MOTION TO AMEND PETITION FOR CANCELLATION AND TO JOIN
PARTY DEFENDANT was mailed by prepaid U.S. First Class Mail on the date noted below, to:

Dennis H. Cavanaugh, Esq.
D H Cavanaugh Associates
555 5TH AVE FL 17
New York, NY 10017-9254

also via Email: dhc@dhcavanaugh.net

Attorney for Respondent
Metagenics, Inc.
a Delaware corporation

Metagenics, Inc.
a California corporation
100 Avenida La Pata
San Clemente, CA 92673

DATED: Honolulu, Hawaii this 21st day of September, 2011.



Martin E. Hsia, Reg. No. 32,471
CADES SCHUTTE
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
(808) 544-3835
Attorneys for Petitioner
EVERETT W. JAMES aka TAD JAMES

ImanageDB:1839009.1